

FTC Non-Compete Ban Struck Down

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PRACTICES Labor and Employment

On August 20, 2024, a Texas federal judge struck down the Federal Trade Commission's (FTC)'s [final rule](#) banning non-compete clauses (non-competes) with most workers. That decision, which the FTC is likely to appeal to the Fifth Circuit Court of Appeals, creates a further district court split that may ultimately lead to U.S. Supreme Court review. For now, the FTC may not enforce the final rule against any employer nationwide, and non-competes remain legal and enforceable, subject to any restrictions imposed by state and local law.

Northern District of Texas Court Blocks FTC's Final Rule

[In April 2024, the FTC voted 3-2 to issue a final rule that would prevent "for-profit" employers from enforcing noncompetes against their employees and other workers.](#) At that time, the final rule was scheduled to take effect on September 4, 2024.

As discussed in our prior [alert](#), on July 3, 2024, in *Ryan LLC v. Federal Trade Commission*, U.S. District Judge Ada Brown of the Northern District of Texas granted a preliminary injunction prohibiting the FTC from enforcing the final rule against the parties to that case, including Ryan, LLC—a global tax consulting firm in Dallas, Texas—and the U.S. Chamber of Commerce.

On August 20, 2024, in a [27-page decision](#), Judge Brown granted plaintiffs' motion for summary judgment and denied the FTC's motion for summary judgment, holding that the FTC exceeded its statutory authority in implementing the final rule and that the final rule is arbitrary and capricious in violation of the Administrative Procedure Act. The ruling blocks the FTC from enforcing the final rule not only against the plaintiffs in the *Ryan* lawsuit, but also against employers nationwide.

What Happens Next?

The *Ryan* decision creates a further district court split on enforceability of the final rule. One federal court in Pennsylvania denied a request for a preliminary injunction and stay of the final rule's effective date, reasoning that the plaintiff in that case had not sufficiently demonstrated a reasonable likelihood of success on the merits and irreparable harm. On the other hand, a Florida federal court granted a preliminary injunction and stay of the effective date of the final rule for the individual plaintiff in that case only (not nationwide). However, the Florida court held that while the plaintiff was likely to succeed on the merits of its argument that the final rule violates the Major Questions Doctrine, the plaintiff was unlikely to succeed on its arguments that the FTC did not have sufficient rulemaking authority to promulgate the final rule or that the final rule violated the Commerce Clause.

The FTC has signaled that it will appeal the ruling in *Ryan* to the Fifth Circuit Court of Appeals, and the case could ultimately reach the United States Supreme Court (SCOTUS). If it does, the FTC is not likely to fare any better than it did in *Ryan*. SCOTUS has recently issued a series of opinions that reign in agency power. Additionally, the SCOTUS' decision in *Loper Bright Enterprises overturning the Chevron Doctrine*, and thus eliminating the deference given to an agency's interpretation of ambiguous statutes, increases the probability that any FTC appeal will fail.

Impacts for Employers

For now, the FTC is permanently enjoined from enforcing its non-compete rule, and employers do not need to prepare notices to former employees regarding the final rule. Employers may continue to enforce, and enter into new, non-competes, subject to any limitations imposed by state law. To that end, many states have placed restrictions on non-competes and in some cases customer or employee non-solicits. Therefore, employers should narrowly tailor, and remain mindful of applicable state law in drafting and enforcing, non-competes.

Haynes Boone will continue to monitor and provide updates on litigation involving the FTC non-compete rule. If you have any questions or need further assistance, please contact a member of the [Haynes Boone Labor and Employment team](#).