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Litigation Update: Northern District of Texas Judge Blocks FTC's Non-Compete Ban

As we [recently reported](#), on August 1, 2024, the Northern District of Texas issued a preliminary injunction in *Ryan LLC v. Federal Trade Commission*, staying the effective date of the Federal Trade Commission's (FTC) rule banning non-competes (the "Rule") and enjoining the FTC from enforcing the Rule. That injunction, however, was only applicable to the plaintiffs and intervenors in the case and did not address the FTC's broader enforcement of the Rule.

On August 20, 2024, the same court [granted](#) summary judgment against the FTC and set aside the Rule, further holding that the non-compete ban is unenforceable nationwide and will not go into effect on September 4, 2024. The court first concluded that the FTC exceeded its statutory authority in issuing the Rule, reasoning that Section 6(g) of the FTC Act *does not* vest the FTC with *substantive* rulemaking authority to regulate unfair methods of competition. The court then held that the Rule constituted "arbitrary and capricious" agency action because "it is unreasonably overbroad without a reasonable explanation." Specifically, the court found that the FTC relied on flawed evidence and data, failed to consider the positive benefits of non-compete agreements and the body of evidence supporting such agreements, and failed to address adequate alternatives to an outright ban on non-competes.

In holding that the Rule constituted unlawful agency action under the APA, the court was left with the question of whether to limit relief to the plaintiffs, or rather, set aside the Rule *with nationwide effect*. Relying on Fifth Circuit precedent in *Braidwood Mgmt., Inc. v. Becerra*, 104 F.4th 930, 951 (5th Cir. 2024), the court held that Section 706 of the APA does not contemplate party-specific relief and, therefore, set aside the Rule *with nationwide effect*. The Rule, therefore, will *not* go into effect on September 4, 2024.

Is This the End of the Road for the FTC?

Following the ruling, the FTC stated that it is considering an appeal. However, any such appeal would go before the Fifth Circuit, and subsequently the U.S. Supreme Court, a process that could take months, if not years, to run its course. Both courts have a recent history of agency rulemaking skepticism, leaving the FTC with a marginal chance of reviving the non-compete ban.

For now, employers can breathe a sigh of relief knowing that the non-compete ban will not go into effect on September 4, 2024. We will continue to monitor the status of the FTC's Rule and will provide updates as necessary.

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