



Litigation Update: The Latest on Efforts to Block FTC's Non-Compete Ban

Aug 01, 2024

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As we [recently reported](#) on April 23, 2024, the Federal Trade Commission (FTC) issued a final rule banning virtually all future and most existing non-compete clauses. The rule was immediately challenged by a global tax services firm and the United States Chamber of Commerce in the Northern District of Texas, and, soon thereafter, others within the business community took action by filing suit in additional federal courts. This post provides an update on the various ongoing legal challenges unfolding across the country.

Ryan LLC v. Federal Trade Commission (N.D. Tex. 2024)

On April 24, 2024, Ryan LLC, along with a group of intervenors led by the Chamber of Commerce, challenged the non-compete rule arguing that the rule exceeds the FTC's statutory authority under the Administrative Procedures Act. On May 10, 2024, the Chamber of Commerce filed a motion to stay the September 4, 2024, effective date of the rule and for a preliminary injunction preventing enforcement of the rule, which would have the effect of halting the rule from going into effect until the underlying lawsuit is resolved.

The Northern District of Texas court [granted the motion](#), finding that the plaintiffs were likely to prevail on the merits. But the court's decision came with an important caveat: The court's order granting the preliminary injunction and halting the effective date of the rule **is only applicable to the plaintiffs**. In other words, the court **did not** halt the non-compete ban from going into effect nationwide on September 4, 2024. The Chamber of Commerce filed a subsequent motion asking the court to reconsider its ruling and expand the preliminary injunction to enjoin enforcement nationwide. The court denied the motion without issuing an opinion, leaving its original order intact.

In the proceedings, the court noted its intent to issue a ruling on the merits of the underlying lawsuit by August 30, 2024. The Chamber

of Commerce also filed a motion for summary judgment on July 19, 2024, seeking permanent nationwide relief from the rule. The plaintiffs have not indicated whether they will seek to appeal the court's limitation of the scope of the injunction to the Fifth Circuit.

ATS Tree Services, LLC v. Federal Trade Commission (E.D. Pa. 2024)

On April 25, 2024, ATS Tree Services, LLC, a Pennsylvania tree servicing company with 12 employees, filed suit in the Eastern District of Pennsylvania also seeking to stay the effective date and enforcement of the rule. In a departure from the ruling in *Ryan*, the Eastern District of Pennsylvania judge denied the plaintiff's motion for a preliminary injunction, reasoning that the FTC could permissibly issue substantive rules like the non-compete ban and that the plaintiff failed to establish that its business would suffer "irreparable harm" if the rule were to go into effect. The court did not take the court's ruling in *Ryan* into consideration when rendering its opinion. The plaintiff has not indicated whether it will appeal the court's decision to the Third Circuit.

Properties of the Villages, Inc. v. Federal Trade Commission (M.D. Fla. 2024)

Properties of the Villages, Inc., a real estate corporation, filed a lawsuit against the FTC in the Middle District of Florida and subsequently moved for a preliminary injunction on July 2, 2024, requesting the same relief sought in *Ryan* and *ATS Tree Services*. The FTC filed its opposition to the plaintiff's motion on July 25, 2024, and the court is now considering whether to hold oral argument or issue its opinion based on the parties' filings.

Takeaways

For now, the future of the non-compete ban is in the hands of the Northern District of Texas and the Middle District of Florida. Given the Northern District of Texas court's finding that there is a substantial likelihood that the plaintiffs will prevail on the merits, it seems likely that the court will strike down the rule nationwide before it is slated to take effect on September 4, 2024. And, given the United States Supreme Court's recent decisions on

administrative rulemaking, many commentators believe it is unlikely that the rule will survive appellate scrutiny and ever become effective. That said, employers should continue to monitor the status of the FTC rule, as well the proliferation of state legislation seeking to rein in the use of non-compete agreements, and be prepared to modify their strategies for protecting confidential information and client relationships to comply with the evolving legal landscape. In the event that the rule is not struck down, employers should determine which employees must receive notice that their non-compete agreement is no longer enforceable upon the rule's effective date of September 4, 2024, and be prepared to provide the required notice. We are closely monitoring the status of these legal developments and will provide updates as necessary.

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