



TEXAS FEDERAL COURT STRIKES DOWN FTC'S NONCOMPETE BAN

August 21, 2024

Yesterday, Judge Ada Brown of the United States District Court for the Northern District of Texas entered a final ruling in the case styled, *Ryan, LLC, et al. v. U.S. Federal Trade Commission*. The ruling set aside the FTC's unprecedented rule (16 C.F.R. 910.1-6) by which it attempted to ban most noncompete agreements.

Overview of the FTC's Noncompete Rule

Earlier this year, the FTC issued a rule banning most noncompete agreements. The effective date of the FTC's noncompete rule was September 4. The FTC's noncompete rule was to be retroactive in application with respect to noncompete agreements with workers who are not classified as "senior executives." The rule also mandated that, before the effective date, employers had to provide clear and conspicuous written notice to all non-senior executives that their noncompetes were no longer enforceable. The ban did not apply to noncompetes in connection with a sale of a business, and nonsolicitation agreements were not expressly covered by the ban. Our prior articles on the FTC Rule and compliance requirements can be found [HERE](#).

The Preliminary Ruling

Last month, Judge Brown granted a preliminary injunction against the FTC and stayed the effective date of the rule. But Judge Brown's preliminary ruling was limited in two important ways: (1) it only applied to the named plaintiffs—Ryan LLC, a Dallas-based tax advisory firm, the U.S. Chamber of Commerce and other pro-business interest groups—in the case; and (2) it was not nationwide in scope. The limited nature of Judge Brown's preliminary ruling left employers and employees alike in a state of flux with perhaps as many questions as answers.

The Final Ruling

On August 20, Judge Brown set aside the FTC's noncompete ban. In a significant blow to the FTC's rulemaking and enforcement authority, Judge Brown concluded:

- the FTC lacks substantive rulemaking authority with respect to unfair methods of competition under the FTC Act;
- the FTC promulgated the noncompete rule in excess of its statutory authority;
- the rule is arbitrary and capricious because it is unreasonably overbroad without a reasonable explanation; and
- the court must hold unlawful and set aside the FTC's rule.

The take-home is that the court's final ruling blocks the FTC's noncompete ban on a nationwide basis.

Where Do Employers and Employees Go From Here?

For now, employers can halt plans to comply with the FTC's noncompete rule, including the written-notice requirement, by September 4, because Judge Brown's ruling found the rule unlawful and set it aside. Employees with existing noncompetes or those who are presented with new noncompetes are subject to existing state laws that govern the agreements.

It is likely that the FTC will appeal Judge Brown's ruling to the United States Court of Appeals for the 5th Circuit. Victoria Graham, an FTC spokeswoman, issued the following statement: "We are seriously considering a potential appeal, and today's decision does not prevent the FTC from addressing noncompetes through case-by-case enforcement actions." There are also pending federal cases in Pennsylvania and Florida that have not yet resulted in final rulings that could potentially alter the current landscape. As these cases make their way through the trial courts and courts of appeal, employers should monitor developments and the impact of any judicial rulings on their business practices.

If you have questions about the effect of the noncompete rule on your business or personal noncompete agreement or about the scope of Judge Brown's recent ruling, please contact Bell Nunnally immediately.

Related Practices

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Practice Area Contact

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