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Federal Court's Ruling Halts FTC's Non-Compete Ban With Nationwide Injunction, Precluding Enforcement: Key Takeaways for Employers

On August 20, 2024, the U.S. District Court for the Northern District of Texas issued a significant ruling in *Ryan v. Federal Trade Commission*, striking down the Federal Trade Commission's ("FTC") rule that banned most non-compete agreements (the "Rule"). The Rule was set to take effect on September 4, 2024. The court, however, set aside the Rule and issued a nationwide injunction prohibiting its enforcement across the country.

Background

The Rule would have prohibited most employee non-compete clauses. The FTC stated employers' implementation of non-competes was an unfair method of competition. The Rule, therefore, was intended to enhance worker mobility by allowing employees to change jobs more easily without fear of a prior employer limiting their future job prospects. Businesses and trade associations filed suit, arguing the FTC exceeded its authority in implementing the Rule. These entities, including the U.S. Chamber of Commerce, asserted, among other things, that the FTC does not have statutory authority to create substantive rules regarding unfair methods of competition and cannot retroactively invalidate millions of existing contracts.

The *Ryan* Court's Decision

In blocking the Rule's enforceability, the *Ryan* Court noted that federal agencies, as "creatures of Congress," may act only within the boundaries conferred upon them by Congress. The Court found Congress did not grant the FTC substantive rulemaking authority under the FTC Act, and, therefore, the FTC acted outside its statutory authority in implementing the Rule. The Court also held that the Rule's national, "one-size-fits-all approach" did not establish a "reasonable explanation" between the facts that the FTC used in support of the Rule (i.e., unfair competition) and the choices it made to implement such a broad regulation. Because the Court determined that the FTC failed to provide an explanation for how it reached its decision to implement a national ban on non-competes, it held the Rule was arbitrary and capricious.

In addition to finding the Rule was unenforceable, the Court issued a final judgment permanently enjoining the enforcement of the Rule. The injunction has nationwide effect, and, as a result, the Rule will no longer take effect on September 4, 2024. The Court's ruling, however, may be appealed by the FTC to the U.S. Court of Appeals for the Fifth Circuit.

Employer Takeaways

The Court's decision brings forth several important considerations for employers. First, the ruling reaffirms the enforceability of properly drafted non-competes in the employment context in states that permit them. Employers may therefore continue using such agreements in states that allow them.

Second, while the Court's decision precludes the Rule's intended near-total prohibition on non-competes in the employment context, it does not mean all employee non-competes will be enforceable. Employers still must conduct a careful review of applicable state law governing employment-related restrictive covenants before attempting to impose and enforce post-employment restrictions on competition. Nearly every jurisdiction has case law or statutes regulating restrictive covenants like non-compete agreements, and state law concerning what is allowed can vary widely from state to state.

Finally, employers should be aware that this decision could spur state or federal lawmakers to enact statutory limitations on non-competes, as some states have already done. As a result, employers should stay informed and be on the lookout for future legal challenges or shifts in policy that could impact the use and enforceability of non-competes and other forms of restrictive covenants.

If you have any questions about how this ruling affects your organization, including whether your post-termination employee restrictions are enforceable under your state's laws, please contact your Kutak Rock attorney or a member of the firm's [National Employment Law Group](#). You may also visit us at www.kutakrock.com.

