

TEXAS FEDERAL COURT SHUTS DOWN FTC NONCOMPETE RULE (WELL, KIND OF...)

July 05, 2024

On the eve of Independence Day, Judge Ada Brown of the U.S. District Court for the Northern District of Texas, preliminarily shut the door on the Federal Trade Commission's (FTC) unprecedented nationwide ban on noncompete agreements. While the court's ruling is a clear blow to the FTC, the limited nature of the ruling leaves employers and employees across the country in a state of flux and with perhaps as many questions as answers.

The FTC's noncompete rule

Earlier this year, the FTC issued a rule banning most noncompete agreements. The scope of the FTC's noncompete rule can be found [here](#). The effective date of the noncompete rule is September 4.

Importantly, the noncompete rule is retroactive in application with respect to noncompete agreements with workers who are not classified as "senior executives." The rule mandates that, before the effective date (09/04/2024), employers must provide clear and conspicuous written notice to all non-senior executives that their noncompetes are no longer enforceable.

The federal lawsuit challenged the noncompete rule

The same day the FTC announced the noncompete rule, Ryan LLC, a Dallas-based tax advisory firm, filed a lawsuit in the U.S. District Court for the Northern District of Texas challenging the noncompete rule, asking the court to stay the effective date of the rule and seeking an injunction against the FTC's enforcement of the ban. The U.S. Chamber of Commerce, Business Roundtable, Texas Association of Business and Longview Chamber of Commerce subsequently intervened in the lawsuit, seeking the same relief against the FTC.

The federal judge *partially* enjoined the FTC's noncompete rule

On July 3, after extensive briefing by the parties, Judge Brown granted the motions for preliminary injunction filed by Ryan and the intervening interest groups and postponed the effective date of the ban. In support of her much-anticipated ruling, Judge Brown found:

- The FTC exceeded its statutory authority in promulgating the noncompete rule.
- There is a substantial likelihood the noncompete rule is arbitrary and capricious because it is unreasonably overbroad without a reasonable explanation.
- The FTC's lack of evidence as to why it chose to impose such a sweeping prohibition—that prohibits entering or enforcing virtually all noncompetes—instead of targeting specific, harmful noncompetes renders the noncompete rule arbitrary and capricious.
- Ryan and the intervening plaintiffs are likely to succeed on the merits that the FTC lacks statutory authority to promulgate the noncompete rule.

While Judge Brown criticized the FTC's rationale and evidence offered to justify the noncompete rule, the ruling contains critical limitations. First, the injunction and stay of the effective date of the noncompete rule only apply to the parties involved in the case—Ryan and the intervening interest-group plaintiffs. Members of the intervening interest-group plaintiffs (members of the U.S. Chamber of Commerce) are expressly not included in the relief the court granted. Second, the court refused to issue a nationwide preliminary injunction.

How should employers respond?

The limited nature of Judge Brown's ruling means the effective date of the noncompete rule is still September 4, for *all* non-parties to the case. Stated differently, the FTC is free and clear to enforce the noncompete rule on September 4, against any employer other than Ryan and the intervening interest-group plaintiffs. The lack of a nationwide injunction is especially problematic for employers navigating the noncompete rule's mandatory requirement that employers issue written notices to all workers (who are not “senior executives”) that their existing noncompetes are unenforceable.

Judge Brown intends to rule on the ultimate merits of the case on or before August 30. Frequently, especially in fast-track cases like the Ryan matter, a judge's preliminary ruling is a reliable preview of a likely ultimate conclusion, although it is possible that the judge could rule differently on the merits. It is also possible that she could issue a nationwide injunction that completely invalidates the noncompete rule. Regardless of the ruling, it is almost a certainty that the losing party will lodge an appeal.

Given the limited nature of the court's ruling, employers should be proactive to ensure they are prepared to comply with the FTC's noncompete rule. 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.

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Practice Area Contact

Kristopher D. Hill

Beverly A. Whitley