United States District Court Blocks FTC's Final Rule Banning Non-Compete Agreements

Audra Hamilton
ahamilton@mwlaw.com
(501) 688.8801

Nathan Read
nread@mwlaw.com
(479) 464.5663

Cara Butler
cbutler@mwlaw.com
(501) 688.8837

Anna Cunningham Rice
arice@mwlaw.com
479.464.5681

A. Mills Bryant
mbryant@mwlaw.com
(501) 688.8832

Alia Reddell
areddell@mwlaw.com
(501) 688.8830

08/26/2024

On April 23, 2024, the Federal Trade Commission ("FTC") announced the "Final Non-Compete Clause Rule" banning most post-employment non-compete clauses between employers and employees. The final rule was set to take effect on September 4, 2024, however, on August 20, 2024, amidst employers' preparation to implement the FTC's ban, Judge Ada Brown of the U.S. District Court for the Northern District of Texas issued an order in *Ryan, LLC v. Federal Trade Commission* blocking enforcement and preventing the implementation of the FTC's final non-compete rule nationwide. Employers are no longer required to comply with the FTC's final rule by September 4th, including sending notices to current and former employees advising that their existing non-compete restrictions are no longer enforceable.

After temporarily enjoining the non-compete rule in July as to the plaintiffs in the case, Judge Brown subsequently granted a summary judgment motion in favor of Ryan, LLC effectively blocking any enforcement or implementation of the FTC's non-compete rule. The District Court held that: (1) the FTC exceeded its statutory authority in enacting the final rule under the Federal Trade Commission Act ("FTC Act"), and (2) the final rule is arbitrary and capricious under the Administrative Procedure Act.

The ruling blocking the FTC's final rule comes in the wake of two key United States District Court decisions in Florida and Pennsylvania, respectively issuing and declining to issue injunctions pertaining to the FTC's non-compete ban. The Florida District Court ruling in *Properties of the Villages, Inc. v. Federal Trade Commission* held that there is a substantial likelihood the non-compete rule exceeds the FTC's statutory authority under Sections 5 and 6 of the FTC Act, citing the FTC's historical lack of previous non-compete enforcement actions. The ruling in *Ryan, LLC v. Federal Trade Commission* effectively affirms and expands on the ruling in *Properties of the Villages, Inc. v. Federal Trade Commission,* finding that the FTC exceeded its statutory authority in enacting the non-compete ban because "the text and structure of the FTC Act reveal the FTC lacks substantive rulemaking authority with respect to unfair methods of competition under Section 6(g)," which the FTC's non-compete ban falls squarely within. The District Court in *Ryan* also found the rule to be arbitrary and capricious because it imposes a one-size fits all approach to every non-compete agreement with no end date, making the rule "unreasonably overbroad without a reasonable explanation."

Incongruently, before the nationwide injunction being issued in *Ryan*, the U.S. District Court for the Eastern District of Pennsylvania issued a ruling applying only to the named parties in *ATS Tree Services, LLC v. Federal Trade Commission*, declining to block the non-compete rule, noting that the FTC acted within its rulemaking authority under Section 6 of the FTC Act by deeming non-compete clauses "unfair methods of competition." Further, the District Court in *ATS Tree Service* found that the FTC previously

promulgated similar substantive rules to prevent unfair methods of competition pursuant to Sections 5 and 6 of the FTC Act and were exercising that same permissible authority with the non-compete rule.

These decisions, especially the *Ryan* decision, are likely to be appealed, evidencing the unsettled nature of the battle between the FTC, employers, and other interest groups. However, the *Ryan* decision as it stands prevents the FTC's final rule going into effect on September 4, 2024. If all the previously mentioned decisions are affirmed on appeal, a circuit split would arise surrounding the non-compete rule, increasing the potential that the Supreme Court will later resolve the issue. While the final rule broadly banning non-compete agreements will not go into effect, the FTC still retains the ability to challenge non-compete agreements on a case-by-case basis and applicable state law surrounding non-compete agreements still applies.

As these issues wind through the court system, employers should continue to examine the implications of utilizing non-compete agreements and other restrictive covenants (confidentiality and non-solicitation provisions) amidst the current legal landscape and evaluate the breadth and scope of their existing agreements.

- *Ryan, LLC v. Fed. Trade Comm'n*, 2024 WL 3879954 (N.D. Tex. 2024).
- *Props. of the Vills., Inc. v. Fed. Trade Comm'n*, 2024 WL 3870380 (M.D. Fla. 2024).
- *ATS Tree Servs., LLC v. Fed. Trade Comm'n*, 2024 WL 3511630 (E.D. Pa. 2024).