

COURT ENTERS LIMITED INJUNCTION ON FTC RULE BANNING NON-COMPETE AGREEMENTS

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In April, the Federal Trade Commission issued an administrative Rule that generally prohibits most employment-based non-compete agreements. Our previous alert on that Rule is available [here](#). The Rule has an effective date of September 4, 2024.

There are several lawsuits challenging the FTC's ability to issue the non-compete ban, and, on July 3, a federal court in the Northern District of Texas (Judge Ada Brown) issued the first substantive ruling in *Ryan, LLC v. Federal Trade Commission*. Judge Brown issued a preliminary injunction finding that the FTC likely lacked the authority to ban non-competes. However, she refused to impose a nationwide injunction, so the scope of the injunction ruling is limited only to the parties in that particular case, one of which is the U.S. Chamber of Commerce. Judge Brown indicated that she will issue a full ruling on or before August 30, 2024, and there are other pending court cases that may rule before then as well.

While this court Order is an initial victory for those challenging the Rule, it is a mixed result and creates further uncertainty about whether the Rule will go into effect as scheduled on September 4. Because this initial result stops short of a nationwide injunction, employers that have been taking a wait-and-see approach to the Rule should start preparing for it to be implemented.

Among other things, employers should:

- Examine their restrictive covenant agreements to determine whether they need to be revised or include additional covenants

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that are permitted under the Rule, such as non-solicitation and non-disclosure provisions.

- Lock in senior executives with non-competes prior to the September 4 deadline because existing non-compete agreements with "senior executives" are grandfathered in under the Rule. A "senior executive" is narrowly defined as a worker in a "policy making position" with total annual compensation of at least \$151,164.
- Make sure that they are able to provide the required notice under the Rule to current and past employees.

Finally, because the scope of the injunction covers the U.S. Chamber of Commerce, employers may consider joining the organization. There is no guarantee that every member of the U.S. Chamber of Commerce will be exempt from enforcement of the Rule, but membership may increase the odds in the event that a nationwide injunction is not entered prior to September 4.

As the court cases are still pending, Hill Ward Henderson will continue to monitor these cases and provide alerts as events develop. Please do not hesitate to contact our attorneys if you have any questions relating to these issues.