



ftc's non-compete ban faces challenge in texas lawsuit as enforcement is put on hold

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MSK Client Alert

July 16, 2024

Earlier this month, a federal judge in Texas issued a preliminary order against the Federal Trade Commission's ban on non-compete agreements. Judge Ada Brown ruled in favor of Ryan LLC, a tax-services firm operating out of Dallas which utilizes non-compete agreements with its employees. Ryan LLC argued that the Federal Trade Commission ("FTC") was overstepping its legal authority by attempting to ban non-competes. This case will have broader implications for the future of the FTC's ban, and comes at a time when the rule-making authority of governmental agencies is in question, as evidenced by the recent Supreme Court ruling which struck down the "*Chevron doctrine*" (stay tuned for a forthcoming post on this topic).

The FTC originally proposed the rule banning (most) non-compete agreements in January 2023. On April 23rd, 2024, they issued a final rule banning non-compete agreements between employers and their employees in a 3-2 vote. They ruled that non-compete clauses are "unfair method[s] of competition" under Section 5 of the FTC Act, and should therefore be banned, with few exceptions for existing non-compete clauses with senior executives. The ban was to come into effect on September 4th, 2024. Further information regarding the non-compete ban can be found here, in Mitchell Silberberg & Knupp's previous alert on the topic.

Ryan LLC sued to block the rule from coming into place in April, and was supported in its efforts by numerous organizations including the U.S. Chamber of Commerce, Business Roundtable and the Texas Association of Business. Ryan LLC, which utilizes non-compete agreements to keep rival firms from hiring its employees and to keep workers from poaching firm clientele, held that the FTC was overstepping its statutory authority in categorizing all non-competes as unfair and anticompetitive. The suit also contends that the ban represents an "arbitrary and capricious" use of the FTC's power.

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Judge Brown's July 3rd decision postpones the date that the non-compete ban will come into effect for the plaintiffs, with a final ruling expected on or before August 30th. However, it is likely, upon review of the initial ruling, that the final decision in August will come out in favor of Ryan LLC. The court essentially tipped its hand in its decision, stating that "The court concludes the commission has exceeded its statutory authority in promulgating the non-compete rule, and thus plaintiffs are likely to succeed on the merits."

Employers should follow the results of the August 30th ruling in order to determine their next steps (at least in states that currently allow noncompetes). While the court appears extremely likely to rule in favor of Ryan LLC, it is possible that it will decline to issue a nationwide injunction, in which case companies that utilize non-compete agreements may still find themselves at risk of lawsuit, should they fail to comply with the new rule. If the ruling does not end the FTC's non-compete ban, a crop of lawsuits against the FTC's ban are expected to follow as other businesses seek to challenge the FTC's authority to regulate non-competes on a national level. Employers should revisit the terms of their non-compete agreements with compliance with the regulation in mind, and would be well advised to develop contingencies to protect their own interests with alternatives such as non-disclosure agreements.