

Federal Judge Blocks FTC Non-Compete Ban

Labor & Employment Law Update

By Craig Kubiak and Laurie Meyer on August 21, 2024

Following a split between federal district courts (federal judges in Texas and Florida ruled to temporarily block the Federal Trade Commission's ban while a Pennsylvania court upheld it), a federal district judge in Texas has issued a nationwide injunction setting aside the ban. **This means that the FTC's rule banning most non-compete agreements will not take effect on September 4th as widely reported.**

US District Court Judge Ada Brown in Dallas ruled in favor of the US Chamber of Commerce and a Texas tax firm who sued to block the rule. The ruling comes after Judge Brown and another federal judge in Florida issued temporary restraining orders blocking the ban...but only for the litigants in that case.

Here, Judge Brown decided the case on cross motions for summary judgment, and ruled that the measure was "unreasonably overbroad without reasonable explanation." The court held that, while the FTC has "some authority to promulgate rules that preclude unfair methods of competition...the FTC lacks the authority to create *substantive rules* through this method." Long story short: only Congress has the authority to enact a ban of the type sought by the FTC.

A spokesperson for the FTC said it is "disappointed by Judge Brown's decision" and that the agency is "seriously considering a potential appeal." However, as of this writing, no appeal has been filed. Further, given the nature of the 5th Circuit Court of Appeals, and the recent overturning of the *Chevron* doctrine, a successful appeal at that level is less likely.

What does this mean for employers? While employers no longer need to send out notices to past and current employees and independent contractors with non-compete agreements, **they should also recognize that this issue is not going away.** Many states have enacted legislation impacting these agreements and the most likely outcome of all of this is a refocused attention on non-competes at the state level. Consult with experienced counsel to make sure that your existing (and planned) non-compete agreements are compliant and enforceable.