

Pennsylvania Judge Disagrees with Texas Judge And Denies Motion for Preliminary Injunction Challenging the FTC's Non-Compete Rule

Labor & Employment Law Update

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A judge in the U.S. District Court for the Eastern District of Pennsylvania declined on July 23 to enjoin the Federal Trade Commission's (FTC's) ban on non-compete agreements. *ATS Tree Services, LLC v. FTC*, Case No. 2:24-cv-01743-KBH. The court rejected the employer's argument that the agency lacks authority to establish the rule. The decision conflicts with a ruling by the U.S. District Court for the Northern District of Texas earlier this month, which preliminarily enjoined the rule for the plaintiffs in that case.

There are now two rulings and two different results, creating uncertainty for employers and employees. Enforceability of the FTC rule banning non-competes probably will not be determined by the date when the rule takes effect on September 4.

In Texas, the court indicated she would issue a final decision in the U.S. Chamber case by August 30. The parties have asked for a permanent nationwide injunction in that case.

If both district courts adhere to their initial rulings, and if they are upheld on appeal, there will be a split between the 5th (Texas) and 3rd (Penn.) Circuits, possibly sending the issue to the U.S. Supreme Court.

Remember that the FTC rule would invalidate all non-competes except for senior executives (persons making \$151,164 or more per year). However it does not invalidate non-solicitation or non-disclosure clauses, so those protections are still available to employers, even if the rule ends up going into effect.

We will keep you apprised of all developments relating the FTC Rule. You can read more on our previous blog post.