

The FTC's Rule Banning Non-Compete Agreements is on Thin Ice

Labor & Employment Law Update

By Laurie Meyer and Julie Proscia on July 8, 2024

On July 3, 2024, a federal judge in Texas issued a preliminary injunction that stays the US Federal Trade Commission's (FTC) near-total ban on non-compete agreements for the named plaintiffs seeking to invalidate the ban which is set to take effect on September 4, 2024.

As a reminder, in April 2024 the FTC voted 3-2 to issue its non-compete rule that essentially banned all new non-competes and a majority of existing non-competes (the Non-Compete Rule). Within hours of the FTC's vote, the US Chamber of Commerce and Ryan, LLC, a leading global tax services and software provider, filed lawsuits challenging the Non-Compete Rule. The plaintiffs argued that the agency lacked the authority to craft rules defining unfair methods of competition. The court's preliminary decision indicates that it believes the Non-Compete Rule goes beyond the FTC's authority. In the wake of the *Loper Bright Enterprises v. Raimondo* Supreme Court decision, overturning the Chevron administrative deference standard, the fate of the Non-Compete Rule is even more uncertain.

Again, the court's July 3rd order applies only to the named and intervenor plaintiffs in this case: Ryan LLC, the Chamber of Commerce of the United States of America, Business Roundtable, Texas Association of Business, and Longview Chamber of Commerce. The court stated that it intends to rule on the merits of the legal challenge seeking to invalidate the Non-Compete Rule on or before August 30, 2024. While the judge currently passed on entering a nationwide injunction, the judge may expand the scope of the relief she granted when she rules on the merits later this summer. In addition, there is another case pending in the Eastern District of Pennsylvania, where the judge should rule on later this month that could further impact the FTC's Non-Compete Rule.

So what to do now? Stay tuned and monitor all developments. We should have a decision in August that we anticipate will provide us with more clarity. In the meantime, please ensure that your current restrictive covenant agreements along with your policies and procedures regarding trade secrets and confidential information are reviewed and strengthened. Additionally, it is important to speak with competent and experienced legal counsel as to your options forward in case the Non-Compete Rule somehow becomes effective.