

Legal Showdown Continues: FTC Appeals Court Ruling Against Non-Compete Ban

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In late August, the Federal Trade Commission ('FTC') indicated that it likely would appeal the Texas District Court's ruling, which blocked the FTC's Non-Compete Rule nationwide.

True to its word, the FTC *has appealed* the ruling.

Texas District Court Blocks the Non-Compete Rule

As we previously reported, on August 20, 2024, Judge Ada E. Brown, a United States District Judge for the Northern District of Texas, granted Ryan LLC and the U.S. Chamber of Commerce's Motions for Summary Judgment against the FTC and set aside the Non-Compete Rule. Judge Brown concluded that the Non-Compete Rule is "arbitrary and capricious" because it is unreasonably overbroad. As a result of this ruling, the Non-Compete Rule was not enforced and did not take effect on September 4, 2024.

What Would the Non-Compete Rule Have Changed?

As a quick refresher, the FTC's Non-Compete Rule, if it were to take effect, would:

1. Prohibit employers from entering into and enforcing new non-competes with *all workers* (including but not limited to, employees, independent contractors, externs, interns, volunteers, apprentices, and sole proprietors who provide a service to a client);
2. Render existing non-competes unenforceable (except for "senior executives"); and,
3. Require employers to notify current and former workers (except senior executives) that their non-competes are no longer enforceable.

The FTC's Appeal to the Fifth Circuit

On October 18, 2024, the FTC filed a notice of appeal to the United States Court of Appeals for the Fifth Circuit, seeking review of the Texas District Court's ruling. The FTC's notice of appeal does not immediately impact Judge Brown's ruling. Absent a Fifth Circuit order to the contrary, the FTC's Non-Compete Rule remains blocked nationwide. This is not the only appeal the FTC has pending in a circuit court.

Multiple Appeals Pending in Circuit Courts

In *Properties of the Villages, Inc. v. Federal Trade Commission*, the FTC appealed the U.S. District Court for the Middle District of Florida's preliminary injunction ruling (which prevents the implementation and enforcement of the Non-Compete Rule with respect to Properties of the Villages, Inc., the plaintiff) to the United States Court of Appeals for the Eleventh Circuit. In applying the "major questions doctrine" (which requires an agency to "point to clear congressional authorization" when it issues rules of "extraordinary . . . economic and political significance"), the Florida District Court found that the Non-Compete Rule likely exceeds the FTC's authority and is unauthorized.

What's Next for Employers?

In light of the pending 2024 elections and several key cases regarding administrative agency action, employers should continue monitoring for any developments on this topic. However, for the time being, the FTC's Non-Compete Rule will remain on pause as the Fifth and Eleventh Circuits review the appeals. Employers do need to make sure their restrictive covenants are up to date with the ever-changing landscape under state law in all states in which they operate.

Our Labor and Employment team is here to help you navigate these complex changes, ensure compliance, and update your restrictive covenants as needed. Don't hesitate to reach out to our experienced attorneys for guidance on non-compete agreements, employment law, and other legal matters affecting your business.

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