

Court Declares Non-Competes Back in Business

Client Alerts

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On August 20, 2024, the United States District Court for the Northern District of Texas, in *Ryan LLC et al. v. Federal Trade Commission*, granted Ryan LLC and the US Chamber of Commerce's motion for summary judgment and barred the Federal Trade Commission (FTC) from enforcing its broad non-compete ban with nationwide effect. The FTC's rule, which would have banned non-compete agreements in most employment contexts, was set to go into effect in two weeks, on September 4, 2024.^[1]

The Court held that the non-compete ban exceeded the FTC's statutory authority and was arbitrary and capricious, violating the Administrative Procedure Act.^[2] On the latter point, the Court took particular issue with the rule's "one-size-fits-all approach" and further expressed that the non-compete ban "is based on inconsistent and flawed empirical evidence, fails to consider the positive benefits of non-compete agreements, and disregards the substantial body of evidence supporting these agreements."^[3] As a result, the Court set aside the FTC's rule.

The important takeaway is that, in light of the *Ryan* decision, if undisturbed by a higher court, employers across the country no longer will need to comply with the FTC's non-compete ban or its requirement to provide notice to current and former employees with active noncompetes that those agreements are unenforceable by September 4. Employers, however, should stay abreast of the legal landscape as the *Ryan* decision will not be the final word on the issue. The FTC will almost certainly appeal the ruling to the Fifth Circuit.^[4] Beyond *Ryan*, litigation on the rule remains pending in a few other federal courts, including in *ATS Tree Services, LLC v. Federal Trade Commission, et al.*, where the Eastern District of Pennsylvania signaled that it likely would uphold the FTC rule.^[5] Decisions in those cases may well lead to their own appeals. In any event, the Supreme Court likely will take up this issue.

Moreover, although the *Ryan* decision provides some immediate relief to employers that were staring down the September 4th deadline to comply with the ban, uncertainty in this area of the law remains. With the federal rule in jeopardy, some states may step up their efforts to restrict noncompetes through new legislation, regulations, or enforcement efforts. Without a federal

standard, the patchwork of state statutes and standards will continue, posing challenges for employers with personnel across multiple jurisdictions. Further, employers' valid interests in protecting their confidential information remain, with or without the non-compete ban. We recommend partnering with experienced outside counsel to help your business navigate this rapidly changing landscape. Jenner & Block's Trade Secrets and Restrictive Covenants team is ready to help.

Footnotes

[1] FTC Finalizes Near Total Ban of Noncompetes – How You Can Prepare Now (Apr. 25, 2024), <https://www.jenner.com/en/news-insights/publications/steps-for-employers-to-consider-in-light-of-ftcs-near-total-ban-of-non-competes>.

[2] *Ryan LLC v. Federal Trade Commission*, No. 3:24-cv-00986-E, ECF No. 211 (N.D. Tex. Aug. 20, 2024).

[3] *Id.* at 24.

[4] While unlikely, the Fifth Circuit could stay the *Ryan* court's order pending appeal, which would leave the rule in effect until the appeal is resolved.

[5] *ATS Tree Services, LLC v. Federal Trade Commission, et al.*, No. 24-1743 (E.D. Penn.); see also *Properties of the Villages, Inc. v. Federal Trade Commission*, 2024-cv-00316 (M.D. Fla.).

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