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Federal District Court Strikes Down FTC Non-Compete Ban

BY CARLY KROLAK AND TIMOTHY P. VAN DYCK • AUGUST 21, 2024

In April of 2024, Bowditch alerted clients that the Federal Trade Commission ("FTC") finalized "The Non-Compete Clause Rule" (the "Rule"), which would ban most employers from using post-employment non-compete agreements in nearly all contexts.

The Rule was set to go into effect 120 days after its publication in the Federal Register, which would have been on September 4, 2024. However, on August 20, 2024, a federal court in Texas declared that the Rule is unlawful and must be set aside.

As previously noted, the U.S. Chamber of Commerce and Ryan LLC filed actions challenging the FTC's authority to issue the Rule in federal courts in Texas, both of which sought a stay of the effective date of the Rule and other preliminary injunctive relief. *See Ryan, LLC v. Federal Trade Comm'n*, No. 3:24-cv-00986 (N.D. Tex. Apr. 23, 2024) ("Ryan Action"); *Chamber of Commerce v. Federal Trade Comm'n*, No. 6:24-cv-00148 (E.D. Tex. Apr. 24, 2024) ("Chamber Action"). In May, the U.S. Chamber of Commerce, the Business Roundtable, the Texas Association of Business, and Longview Chamber of Commerce intervened in the Ryan Action.

On July 3, 2024, the Court in the Ryan Action (Brown, J.) granted preliminary injunctive relief, temporarily staying the effective date of the Rule and enjoining the FTC from implementing or enforcing it, but only with respect to the named plaintiff and plaintiff-intervenors. *See Ryan LLC, et al. v. Federal Trade Comm'n*, No. 3:24-CV-00986-E, 2024 WL 3297524 (N.D. Tex. July 3, 2024).

On August 20, 2024, the Court in the Ryan Action (Brown, J.) issued a final order, granting summary judgment to the plaintiff parties, setting aside the Rule, and ordering that "the Rule shall not be enforced or otherwise take effect on its effective date of September 4, 2024 or thereafter."

Similar to the Court's reasoning in granting injunctive relief, the Court concluded that: (1) the FTC lacks authority to create substantive (as opposed to procedural) rules regarding unfair methods of competition; and (2) the Rule is

arbitrary and capricious.

In finding the Rule was arbitrary and capricious, the Court concluded that the FTC relied on evidence regarding various state policies, none of which were as broad as the FTC's categorical ban, that was "flawed," "inapposite" and provided "no evidence or reasoned basis" for the Rule's "sweeping prohibition." The Court also found that the FTC had "fail[ed] to consider the positive benefits of non-compete agreements, and disregard[ed] the substantial body of evidence supporting these agreements." Because the FTC failed to analyze or explain its rejection of less disruptive alternatives to the Rule, the Court concluded that the FTC had failed to adequately justify the Rule.

Although the preliminary injunction ruling declined to provide relief to non-party employers, the Court, relying on a recent Fifth Circuit decision, concluded that the Administrative Procedure Act ("APA") "does not contemplate party-specific relief" and the order setting aside the Rule under the APA was "not party-restricted" and must have "nationwide effect."

The FTC is reportedly considering an appeal of the ruling, and could potentially seek a stay of the ruling pending the appeal. Additionally, two other challenges to the Rule are pending in different federal district courts: *ATS Tree Servs, LLC v. Fed. Trade Comm'n*, No. 2:24-cv-01743 (E.D. Pa. Apr. 25, 2024) and *Properties of the Villages, Inc. v. Federal Trade Commission*, No. 5:24-cv-00316 (M.D. Fla. Jun. 21, 2024).

We will continue to monitor for future developments. However, for now, the ruling in the Ryan Action means that the Rule, including its requirement that employers provide notice that workers' non-compete agreements are unenforceable, will not go into effect on September 4, 2024.