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Texas Federal Court Strikes Down FTC Noncompete Rule



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In the first definitive ruling on the Federal Trade Commission's Final Rule banning most noncompete agreements, the Texas federal judge that previously granted a preliminary injunction to temporarily block the Final Rule from taking effect ([see our blog post on that ruling](#)) has now entered judgment in the plaintiffs' favor to "hold unlawful" and "set aside" the rule nationwide under the Administrative Procedure Act (APA).

The court found that the FTC lacks authority under the Federal Trade Commission Act (the Act) to create substantive rules to address unfair methods of competition, which is the Final Rule's stated purpose. The court thus concluded that the FTC exceeded its statutory authority.

The court also criticized the Final Rule as being "arbitrary and capricious" by imposing a "one-size-fits-all" approach that "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." In addition, the court found that the FTC "failed to sufficiently address alternatives to issuing the Rule."

Leaving no doubt as to the effect of the ruling, the court concluded that the Final Rule "shall not be enforced or otherwise take effect on its effective date of September 4, 2024, or thereafter." Notably, the court rejected the FTC's request to limit the vacatur of the Final Rule to the named plaintiffs. Unlike nationwide injunctions, which even certain justices on the U.S. Supreme Court have viewed with skepticism, it is generally accepted that vacating unlawful agency action extends beyond the particular parties seeking relief.

This is not, however, the end of the story as three cases were filed challenging the Final Rule. A court in Pennsylvania reached the opposite conclusion initially upholding the Final Rule while a court in Florida has initially blocked the Final Rule as to the plaintiff in that case. Additional briefing is underway in the Pennsylvania case, which may well result in a win for the FTC, setting up an ultimate decision by the U.S. Supreme Court after the lower court cases proceed through the circuit courts of appeals (the FTC has stated it is considering appealing the Texas court's decision).

For now, however, employers may continue to utilize noncompete agreements (subject to any applicable state law requirements).

Stay tuned for further developments on this and other areas of employment law and do not hesitate to contact any of the [Human Resources and Employment Law](#) attorneys at Gould & Ratner to review the specifics of your situation.