

LITIGATION AND LABOR AND EMPLOYMENT INFORMATION MEMO

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A Ban No More: District Court Strikes Down FTC's Noncompete Ban

The FTC's noncompete ban (16 C.F.R. § 910-1.6) is no more, at least for the time being. On Aug. 20, 2024, the United States District Court for the Northern District of Texas (Hon. Ada Brown, U.S.D.J.), in *Ryan, LLC v. Federal Trade Commission*, 24-cv-986, struck down the FTC's noncompete ban, which was set to take effect on Sept. 4, 2024. The District Court's Memorandum and Opinion precludes the FTC's noncompete ban from going into effect nationwide.

In its Memorandum and Opinion, the District Court determined that the FTC lacked the statutory authority to promulgate substantive rules relating to the prevention of unfair methods of competition and that the FTC's noncompete ban was arbitrary and capricious. Specifically, the District Court concluded that the text and structure of the FTC Act compel the determination that the FTC lacks substantive rulemaking authority with respect to unfair methods of competition. As a result, the FTC exceeded its statutory authority in promulgating the noncompete ban.

The District Court further found that the FTC failed to present sufficient evidence supporting the noncompete ban. Specifically, because no state has enacted a ban as wide-sweeping as the FTC's noncompete ban, the studies referenced by the FTC which analyzed state noncompete bans did not support the FTC's universal noncompete ban. Moreover, the FTC's evidence in support of the noncompete ban was based on factual situations specific to each state and did not, in turn, support a universal, nationwide ban. Finally, the District Court determined the FTC failed to sufficiently address alternatives to issuing the noncompete ban, such as, for example, restrictions on the use of non-competes for low wage workers. Thus, the District Court held that the FTC's noncompete ban was arbitrary and capricious.

The FTC will likely appeal the District Court's decision to the United States Court of Appeals for the Fifth Circuit – the appellate court encompassing Texas. Based on its history, it is likely the Fifth Circuit will affirm the District Court's decision striking down the FTC's noncompete ban. However, the FTC still has a sliver of hope for its noncompete ban in a case pending before the United States District Court for the Eastern District of Pennsylvania, which recently denied the plaintiff's request for a preliminary injunction, finding the FTC did have the authority to make substantive rules relating to the prevention of unfair methods of competition and demonstrated a sufficient evidentiary basis for the rule, analyzed [here](#). Given this, the FTC's noncompete ban may very well end up before the United States Supreme Court. The question remains, however, when will it get there and how the Supreme Court will rule on this issue.

As it stands, the FTC's noncompete rule is no more and will not go into effect on Sept. 4, 2024. This means that the enforceability of non-competes will continue to be analyzed under applicable state law, which, in New York, requires a non-compete to be reasonable in geographic and temporal scope and no broader than necessary to achieve a legitimate business interest. We will continue to closely monitor the situation and provide updates as they become available.

For any questions about this issue, please contact [Bradley A. Hoppe](#), [Kevin G. Cope](#) or any attorney in Bond's [litigation](#) or [labor and employment practices](#) or the attorney at the firm with whom you are regularly in contact.

