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“You’re Out!” FTC’s Proposed Non-Compete Ban Strikes Out Nationwide

Client Alert

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On August 20, 2024, a Texas federal court struck down the Federal Trade Commission’s (“FTC’s”) proposed ban on non-compete agreements on a nationwide basis (and just a few weeks before it was set to take effect). A copy of the court’s opinion and order in *Ryan LLC v. FTC* can be found [here](#).

In her opinion and order, Judge Ada Brown did what most legal experts in this nuanced area of law thought a judge would ultimately do—she vacated the rule completely. The court’s analysis centered on the Administrative Procedures Act (“APA”) in vacating the rule.

First, the court concluded that “the FTC lacks substantive rulemaking authority with respect to unfair methods of competition.” The agency simply did not have the power or authority to ban non-competes because Congress only authorized it to issue procedural rules—not substantive rules.

Second, the court concluded that the non-compete ban was “arbitrary and capricious” for a number of reasons, including, but not limited to, (i) it was unreasonably overbroad, (ii) it applied across the board no matter the industry or area with no end date—a “one-size-fits-all approach”, (iii) it was broader than every state in the country, (iv) it lacked specificity in its approach, (v) the FTC failed to consider the positive benefits of non-competes, and (vi) the FTC did not address alternatives to a full blown nationwide ban on nearly every non-compete agreement.

What does this ruling mean for employers and businesses?

While there is a very small possibility that an appeals court could overturn this ruling, for now, employers across the country do NOT need to comply with the rule by September 4 as originally set. We are effectively back to the status quo that preceded the

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Director

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FTC's proposed rule in January 2023.

Employers and businesses should consult with their legal experts and audit their current non-compete agreements and other agreements (like NDA's), ensure that those agreements are reasonable under the current law (it varies state by state) (and if not, further revise them and narrowly tailor them), and continue to enforce them as appropriate. With that, a number of states have proposed bills that would effectively mimic the FTC non-compete ban (but at a state level) and/or attempt to further restrict certain restrictive covenants. And with this latest ruling, there will likely be new bills introduced in other states that will attempt to take action to outright ban and/or further restrict non-compete agreements.

Butzel's Non-Compete & Trade Secret Team will continue to monitor the litigation associated with the FTC rule, as well as monitor any new bills at the federal or state level that seek to outright ban and/or further restrict non-compete agreements. If you have questions, comments, or would like further guidance, please contact the author of this Client Alert or your Butzel attorney.

Bernard J. Fuhs

313.225.7044

fuhs@butzel.com