

TEXAS COURT STRIKES DOWN FTC'S NON-COMPETE BAN NATIONWIDE

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On Tuesday, August 20, 2024, a Texas federal trial court struck down the Federal Trade Commission's ("FTC's") April 23, 2024, rule banning most non-compete agreements in employment contracts (the "Non-Compete Rule").

The Texas court ruled that the FTC exceeded its statutory authority in issuing the Non-Compete Rule. The court also held that the Non-Compete Rule is arbitrary and capricious, finding that the FTC failed to provide sufficient justification to support it and did not consider less severe alternatives to a near-total ban on non-competes.

For now, the Texas court's ruling places the Non-Compete Rule on hold. The most immediate impact is the suspension of the September 4, 2024, deadline by which employers were required to send employees subject to a non-compete notice that their non-competes would not be enforced.

The FTC can appeal this ruling to the 5th Circuit Court of Appeals, and then eventually to the Supreme Court, but likely will face an uphill battle in doing so because of new Supreme Court precedent significantly limiting the deference given by courts to federal agencies, like the FTC.

This means that, for now, employers may still enforce existing non-competes and issue new non-competes, as long as they comply with applicable law, which generally requires that non-competes support a legitimate business interest and are reasonable in geography, duration, and scope. State law may also impose stricter requirements on non-competes. Indeed, the general trend in many states in recent years has been to impose additional requirements for enforcement of non-competes that ensure they are designed to protect legitimate business interests and do not unreasonably prohibit employees from earning a living. It thus remains crucial for employers to ensure that their non-competes are crafted in strict compliance with applicable state law and are in line with their overall business strategy.

Royer Cooper Cohen Braunfeld (RCCB) stands ready to help clients navigate this rapidly evolving area of law. Contact Alexander Nassar to leverage the experience of our Employment Law Practice Group.

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