



Client Alert:

Texas Federal Court Sets Aside the FTC's Rule Banning Non-Competes, With the Court's Order Having Nationwide Effect

By Christopher J. Walsh

This week brought a major development in litigation surrounding the FTC's sweeping rule that would ban and render unenforceable most non-compete clauses in employment contracts. Specifically, on August 20, 2024, the U.S. District Court for the Northern District of Texas in [Ryan LLC, et al. v. FTC](#) issued an order setting aside the FTC's rule nationwide, meaning that the rule will no longer become effective on September 4, 2024 as scheduled.

As we have previously [written](#), the FTC issued the non-compete rule in April 2024 as part of a purported effort to promote competition, protect the freedom of workers to change jobs, and increase innovation. The FTC's rule has both prospective and retrospective implications.

Prospectively, the rule would prohibit employers from entering into any new non-compete agreements as of the effective date, although there are certain notable exceptions (e.g., non-competes in connection with the bona fide sale of a business). Retrospectively, the rule would invalidate existing non-competes with workers—with an exception for senior executives—and require employers to provide written notice to any current or former worker subject to a non-compete informing them that the employer will not enforce that provision after the effective date.

The FTC's non-compete rule immediately drew various legal challenges. As we explained [previously](#), in July 2024, the U.S. District Court for the Northern District of Texas in *Ryan* held that the FTC had exceeded its statutory authority in issuing the rule and granted a preliminary injunction, but that injunction was limited to the specific plaintiff in that case. Coming out the other way, soon thereafter, the U.S. District Court for the Eastern District of Pennsylvania denied a preliminary injunction and upheld the FTC rule in a separate suit. Then, on August 15, the U.S. District Court for the Middle District of Florida sided with the Texas federal court, concluding that the FTC rule exceeds the agency's authority and granting a preliminary injunction for the plaintiff in that case as well.

Now, the same Texas federal court in *Ryan* has granted summary judgment against the FTC. The court's analysis in granting summary judgment mirrors its prior order granting the plaintiff's motion for preliminary injunction. The court once again concluded that the FTC had overstepped its statutory authority in promulgating the rule, and the court held that the rule was "arbitrary and capricious" in violation of the Administrative Procedures Act.

Significantly, however, the Texas court's order in this procedural posture is no longer limited to the specific named parties in that case. Instead, the court "set aside" the FTC rule, explaining that its order has "nationwide effect" that is "not party restricted" and "affects persons in all judicial districts equally." In other words, the Texas court's most recent order now mandates that the rule shall not be enforced or otherwise take effect on its effective date or thereafter. In the wake of the decision, the FTC stated that it is "seriously considering a potential appeal," which would need to be filed within 60 days of the court's order. We will continue to provide updates on the status of the rule as litigation continues.

For resources and forthcoming updates related to the FTC's non-compete rule, you can find further information on our website here: [FTC Non-Compete Ban Resources - McLane Middleton](#).

In addition, you can contact attorneys Peg O'Brien at (603) 628-1490, Jennifer Parent at (603) 628-1360, or Christopher Walsh at (603) 628-1140.

Questions/Contact



[Margaret "Peg" O'Brien](#)
Director, McLane Middleton
Chair of Employment Law Group
(603) 628-1490 | margaret.obrien@mclane.com



[Jennifer L. Parent](#)
Director, McLane Middleton
Chair of Business Litigation Group
(603) 628-1360 jennifer.parent@mclane.com



[Christopher J. Walsh](#)
Associate, McLane Middleton
Litigation Department
(603) 628-1140 | christopher.walsh@mclane.com