

Client Alert

July 2024

FTC's Non-Compete Ban in Doubt

A federal judge in the U.S. District Court for the Northern District of Texas has issued a preliminary ruling enjoining the Federal Trade Commission's ("FTC") recently enacted [rule](#) prohibiting non-compete clauses (the "Rule"). The Rule would ban most direct and some indirect contractual limits on employees' ability to work for competing employers after leaving their current jobs. See [Client Alert: FTC Bans Non-Competes](#).

For now, the ruling in *Ryan LLC v. FTC* only applies to the plaintiffs and various business associations who intervened seeking to set aside the Rule. The Rule is currently set to take effect on September 4, 2024 as to all other employers.

However, Judge Ada Brown, who granted the preliminary injunction in this case, has indicated that she intends to issue a final ruling on or before August 30, 2024. In granting the preliminary injunction, Judge Brown found that the plaintiffs are "likely to succeed on the merits" in their challenge, and continued: "[T]he Court concludes the [FTC] has exceeded its statutory authority in promulgating the Non-Compete Rule." If the Court's final ruling is consistent with this finding, it is likely that the final injunction will be nationwide, effectively barring the FTC from enforcing the Rule.

In the meantime, and if Judge Brown sets aside the Rule as expected, laws governing non-compete agreements remain a state-by-state patchwork. California, Oklahoma, North Dakota and Minnesota ban non-compete agreements, with narrow exceptions involving the sale of a business, while at least 11 states have passed more limited bans of certain types of non-competes, or non-competes for certain categories of workers.

The FTC's publication of the Rule in May spurred renewed interest in state-level regulation—in June, Rhode Island Governor Dan McKee vetoed an act that would prohibit most non-compete agreements, citing fears that the legislation would render Rhode Island businesses uncompetitive if the Rule is set aside. Rhode Island joined New York and Maine on the list of states in which broad non-compete bans were rejected

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after New York Governor Kathy Hochul vetoed a similar law in December, and Maine Governor Janet Mills vetoed a similar law in March. Proposals to ban non-compete agreements remain pending in Michigan and New York City.

Please contact the Olshan attorney with whom you regularly work or one of the attorneys listed herein if you would like to discuss further or have questions.

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