

July 08, 2024

## FTC NON-COMPETE RULE ENJOINED BY FEDERAL COURT

On July 3, 2024, the U.S. District Court for the Northern District of Texas issued a limited stay and a preliminary injunction regarding the Federal Trade Commission's (FTC) Final Rule banning most non-compete agreements. However, the stay and the injunction currently apply only to the parties to the case before the Court. At least for now, the FTC's Final Rule is scheduled to go into effect for the remainder of the country on September 4, 2024. However, there is reason to believe there may be a broader injunction when the Court formally considers the Rule's merits later this summer.

The Texas Court said it intends to rule on the merits no later than August 30, 2024. In its July 3 ruling, the court was harshly critical of the FTC Rule and skeptical of the FTC's likelihood of success. This suggests that the Court may yet issue a more sweeping decision that affects more than just the parties to the case. The Court's specifically found, among other things:

- The FTC does not appear to have the authority to issue the Final Rule under the text and history of the FTC Act;
- Even if the FTC has such authority, it failed to follow the Administrative Procedures Act when implementing the Rule and, as such the Rule is "arbitrary and capricious"; and
- The Court noted that before issuing the final Rule the FTC failed to consider less-invasive alternatives and failed to take into account employers' and employees' contractual reliance on their existing agreements.

More legal challenges to the FTC Rule loom in other jurisdictions. The Eastern District of Pennsylvania has indicated that it will rule on an injunction against Final Rule by July 23, 2024. Whether the Pennsylvania court will issue a nationwide injunction, or whether the Texas court will expand its ruling to include broader injunctive relief on August 30, 2024, remains to be seen.

If the FTC Rule ultimately goes into effect in September, employers will be required to stop using non-competes in agreements, except for agreements involving a small subset of senior executives. Employers will also be required to issue notice to employees informing them that their non-competes will no longer be enforced. To prepare for this possibility, employers should 1) identify current and former employees who are currently subject to non-competes so that they are ready to issue the required notice; and 2) identify which employee agreements, if any, are not subject to the FTC Rule.

## JAH Can Help

Our labor and **employment attorneys** at JAH are here to help you plan and navigate the new rule and any evaluation or preparation needed in advance of the effective date. **[Click here to contact a member of our Employment Practice Group if you require assistance.](#)**

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