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Dallas Federal Court Temporarily Blocks FTC Noncompete Enforcement

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On the eve of the July 4 holiday, Judge Ada Brown of the U.S. District Court for the Northern District of Texas in Dallas made her own fireworks in the courtroom when she granted a request by the U.S. Chamber of Commerce and a Texas-based tax firm for a preliminary injunction seeking to prevent the Federal Trade Commission's (FTC's) rule banning "noncompete" clauses in employment agreements. Although the court declined to issue a nationwide ruling at this time, Judge Brown in her ruling determined that the challenge to the FTC rule is "likely to succeed on the merits," and that the public interest weighed in favor of temporarily blocking the Rule. Judge Brown said she expected to issue a final decision by Aug. 30, 2024.

Background

On April 23, 2024, the FTC adopted a rule that would ban most "noncompete" agreements, including those pertaining to "senior executives." The only noncompete agreements that would survive under the FTC ban would be existing agreements for executives who earn more than $151,164 a year in a "policy-making position." All other noncompetes for other employees would become unenforceable.

Following the FTC rule, as noted in a previous article by Wilson Elser, plaintiff Ryan LLC, along with intervenor plaintiff the United States Chamber of Commerce, commenced separate actions in the U.S. District Court for the Eastern District of Texas (the actions were eventually consolidated) seeking, among other things, (1) a declaration that the FTC's Noncompete Rule is arbitrary, capricious, or otherwise contrary to law within the meaning of the Administrative Procedure Act and (2) an order permanently enjoining the FTC from enforcing the Rule against its members.

Judge Brown's decision focused largely on whether the statute authorizing the creation of the FTC granted the FTC the authority to issue such a sweeping rule. Judge Brown stated that the FTC Act did not grant such authority, writing, "[t]he court concludes the text and the structure of the FTC Act reveal the FTC lacks substantive rulemaking authority with respect to unfair methods of competition." Judge Brown went on to conclude that the FTC "has exceeded its statutory authority in promulgating the noncompete rule, and thus plaintiffs are likely to succeed on the merits." Specifically, Judge Brown stated that "the role of an administrative agency is to do as told by Congress, not to do what

the agency think[s] it should do."

This decision comes days after the U.S. Supreme Court struck down *Chevron* Deference, which is telling for the outlook on the authority of federal agencies. For nearly 40 years, when a court found that a statute was ambiguous, the court deferred to the reasonable interpretation of the federal agency administering the statute. On June 28, 2024, the U.S. Supreme Court overruled *Chevron* and held that courts "may not defer to agency interpretation of the law simply because a statute is ambiguous."

Analysis

Judge Brown's ruling on the FTC ban provides companies that use noncompetes with a temporary reprieve. The noncompete ban was set to take effect nationwide Sept. 4, 2024. However, Judge Brown's ruling will now slow the momentum until her final ruling in August. While uncertain at the moment, Judge Brown's analysis indicates that she is ready to block the FTC rule after concluding the plaintiffs would suffer irreparable harm and would likely prevail on the merits.

Despite this ruling, we anticipate there will be further developments before the FTC rule is set to go into effect, with the potential for significant impacts on existing noncompete agreements. Many states are already using the FTC rule as an impetus to either ban or reform the use of noncompete agreements in their respective venues. Accordingly, employers should be proactive in reviewing and updating their employment agreements to carefully craft noncompetes so as to prevent the certain legal challenges to come.

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