

Texas Federal Court Rejects FTC's Non-Compete Ban

AUGUST 21, 2024

Authors: [W. Eric Baisden](#), [Adam Primm](#), [Eric M. Flagg](#)

As every employer in the U.S. is likely aware, the Federal Trade Commission's ("FTC") near-universal ban on non-competes nationwide, which the FTC voted to implement via regulatory rulemaking on April 23 of this year, has been subject to a slew of challenges since the evening of the FTC's vote. As we explained early last month, the court in one of the headline lawsuits-brought by tax service firm Ryan, LLC in the U.S. District Court for the Northern District of Texas-granted a preliminary injunction in that case, prohibiting the FTC from enforcing the rule (but only with respect to Texas as an employer) until the court was able to issue a final decision. In granting that preliminary relief, the Court signaled its intention to ultimately rule in favor of the plaintiffs. The Court indicated that it intended to reach a final ruling by August 30.

Yesterday evening, the Texas Court issued its decision and set aside the final rule, preventing it from "be[ing] enforced or otherwise tak[ing] effect on its effective date of September 4, 2024 or thereafter." In rejecting the non-compete ban, the Court relied multiple times on the Supreme Court's [recent landmark decision striking down the *Chevron* doctrine](#), which instructed courts to defer to agency interpretations of a statute if those interpretations were reasonable and consistent with Congress's intent. As anticipated, the Court subscribed to many of the arguments raised by the plaintiffs. While the Court acknowledged that the FTC has *some* authority to issue rules to prohibit unfair competition, the Court concluded that this authority does not include *substantive rulemaking authority* with respect to preventing unfair competition. On this basis alone, the Court concluded that the FTC exceeded its statutory authority. And while not necessary to its holding, the Court also concluded that the non-compete ban was an arbitrary and capricious rulemaking-a conclusion that would also be sufficient in and of itself to support striking down the rule.

The Key Takeaway for Employers

While the Texas Court's grant of a preliminary injunction and the U.S. District Court for the Eastern District of Pennsylvania's *denial* of a preliminary injunction left employers with uncertainty as to the enforceability of their non-compete agreements, last night's decision by the Texas Court is the final word on the subject-at least for now. Employers should not take any actions to invalidate their non-competes, which remain enforceable in light of last night's decision. In the event that the Pennsylvania Court decides in favor of the FTC, the issue will be ripe for appeal to U.S. Courts of Appeals and, ultimately, to the Supreme Court. Until then, employers can breathe a sigh of relief as their non-competes remain enforceable.

We will continue to provide updates on the Pennsylvania Court case, as well as appeals in both cases as they arise.

For more information on the non-compete ban, its ongoing challenges, and how it may affect your business, contact a member of Benesch's [Labor & Employment Practice Group](#).

W. Eric Baisden at ebaisden@beneschlaw.com or 216.363.4676.

Adam Primm at aprimm@beneschlaw.com or 216.363.4451.

Eric M. Flagg at eflagg@beneschlaw.com or 216.363.6196.