

**Client Alert** | August 22, 2024

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## Judge Blocks Implementation of the FTC Non-Compete Ban Nationwide

On August 20, 2024, the U.S. District Court for the Northern District of Texas issued a nationwide permanent injunction blocking the implementation of the Federal Trade Commission's (the "FTC") Final Rule that bans non-compete agreements (the "Final Rule").

As discussed in [our prior client alerts](#), U.S. District Judge Ada E. Brown previously issued a preliminary injunction in July 2024 prohibiting enforcement of the Final Rule with respect to just the named plaintiffs in Ryan LLC v. Federal Trade Commission (the initial lawsuit attempting to block the rule) while she considered the plaintiffs' motion to strike down the Final Rule entirely.

However, on August 20, 2024, Judge Brown set aside the Final Rule as "an unlawful agency action" on the grounds that (i) the FTC exceeded its rulemaking authority with respect to the Final Rule, and (ii) the Final Rule is arbitrary and capricious and therefore unlawful. As a result of her ruling this week, the Final Rule will not go into effect on September 4, 2024, as originally planned.

### **Lack of Rulemaking Authority**

In her ruling, Judge Brown held that the FTC lacked the substantive rulemaking authority to adjudicate unfair methods of competition. Judge Brown noted that Congress granted the FTC some rulemaking authority to issue certain "housekeeping" rules with respect to its enforcement actions, but concluded that the Federal Trade Commission Act (the law that created the FTC) does not include the express grant of substantive rulemaking authority necessary for the FTC to properly issue the Final Rule. As a result, Judge Brown ruled that the FTC overreached its statutory authority in promulgating the non-compete ban.

### **Arbitrary and Capricious**

Judge Brown further held that the Final Rule is arbitrary and capricious, a standard used to determine whether an administrative action is unlawful, because it is unreasonably overbroad without a reasonable explanation. She noted that the Final Rule is "a one-size-fits-all approach" that failed to establish a rational connection between the categorical ban on non-competes and what the FTC deemed to be an undue restraint on employee mobility. Judge Brown further noted that the Final Rule is broader than any state law banning non-compete agreements, the FTC failed to consider any alternatives to a complete ban on non-competes, and the FTC disregarded substantial evidence supporting the positive benefits of non-compete agreements.

### **Next Steps**

Judge Brown held that the Final Rule was an "unlawful agency action" on both grounds set forth above and, as a result, has implemented a nationwide bar of the Final Rule. Following the ruling, the FTC stated that it will likely appeal the decision and that it still plans to regulate non-compete agreements on a case-by-case basis through enforcement actions until the appeal is final. For the time being, however, non-compete agreements remain effective and enforceable to the same extent they did prior to the FTC's publication of the Final Rule (subject to compliance with applicable state and local laws). We will continue to monitor a potential appeal by the FTC and will provide updates on any further developments. However, given

the FTC's continued interest in examining non-compete agreements and evolving state laws governing non-compete agreements, employers are encouraged to review their current and go-forward non-compete arrangements with counsel.

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## Key Contacts

If you have any questions regarding the foregoing, or non-competition or restrictive covenants agreements generally, or would like assistance in evaluating your existing restrictive covenant arrangements, please contact your Morrison Cohen relationship attorney or one of our following Executive Compensation and Employee Benefits and Labor & Employment Law attorneys:

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