

Client Alert

Global Human Capital and Compliance

AUGUST 21, 2024

For more information,
contact:

Amanda A. Sonneborn
+1 312 764 6940
asonneborn@kslaw.com

Jeffrey S. Spigel (Jeff)
+1 202 626 2626
jspigel@kslaw.com

Peter J. Wozniak
+1 312 764 6948
pwozniak@kslaw.com

Andrew Cockroft
+ 1 312 764 6917
acockroft@kslaw.com

King & Spalding

Chicago
110 N Wacker Drive
Suite 3800
Chicago, Illinois 60606
Tel. +1 312 995 6333

Washington, D.C.
1700 Pennsylvania Avenue,
NW
Suite 900
Washington, D.C. 20006
Tel. +1 202 737 0500

FTC Non-Compete Ban Blocked Nationwide: Texas District Court Sets Aside the FTC's Rule, Permanently Barring FTC Enforcement, and Preventing the Rule from Going Into Effect

On August 20, 2024, the court in *Ryan LLC v. FTC*, pending in the Northern District of Texas, granted the plaintiff and intervenors' motions for summary judgment. The court ruled that the FTC lacked statutory authority to promulgate its rule on non-compete clauses (the "Rule") and that the Rule was arbitrary and capricious under the Administrative Procedure Act (the "APA"). Importantly, the court found that the proper remedy was to "set aside" the Rule, thereby barring the FTC from enforcing the Rule and preventing the Rule from going into effect.

In other words, the *Ryan LLC* court ordered that the Rule will not go into effect on September 4, 2024, and that the FTC cannot enforce the Rule anywhere in the nation.

The *Ryan LLC* court previously set a deadline of August 30 for its decision on the merits, but issued this ruling ten days before that deadline and just four days after briefing was complete on the parties' respective summary judgment motions.

The FTC is likely to appeal this ruling to the Fifth Circuit Court of Appeals as soon as possible.

HOW DID WE GET HERE?

On April 23, 2024, the FTC, in a party-line vote, approved its final rule on non-competes. The Rule, with narrow exceptions, bans all non-competes nationwide, including de facto non-competes, and requires covered employers to notify workers that their non-competes will not be enforced



and cannot legally be enforced. The Rule was set to go into effect on September 4, 2024.

As soon as the Rule was approved, employers and business groups challenged the Rule in court. As of August 19, there were three primary court challenges to the Rule:

- *Ryan LLC v. FTC* (Northern District of Texas);
- *ATS Tree Services v. FTC* (Eastern District of Pennsylvania); and
- *Properties of the Villages v. FTC* (Middle District of Florida).

The courts in the *Ryan LLC* and *Properties of the Villages* matters each granted the respective plaintiffs and intervenors' motions to preliminarily stay the Rule. However, those courts each limited the stay to the named plaintiffs and intervenors (i.e., there was no nationwide injunction of the Rule), despite finding that the FTC lacked statutory authority to issue the Rule, and despite finding that the Rule was arbitrary and capricious under the APA.

The court in *ATS Tree Services*, on the other hand, held the opposite. It found that the FTC had statutory authority to issue the Rule and that the Rule complied with the APA.

Each of these rulings concerned preliminary relief and, in each case, the courts were set to separately address summary judgment at a later date.

WHAT DOES THIS RULING MEAN FOR EMPLOYERS?

The Rule will not go into effect on September 4, absent extraordinary circumstances.

The fate of the Rule is now likely in the hands of the Fifth Circuit Court of Appeals. Depending on the assigned panel, the FTC may face an uphill battle to save the Rule. Notably, a Fifth Circuit panel recently vacated a rule from the Securities and Exchange Commission ("SEC") on the grounds that the SEC exceeded its statutory authority.

The timing of an appellate decision with respect to the Rule will depend on whether and how quickly the FTC proceeds with an appeal and to what extent the Fifth Circuit allows for expedited briefing and ruling.

At present, it is unclear how the proceedings in Texas and the Fifth Circuit will be impacted by parallel litigation in the *ATS Trees Service* matter, or vice versa. We expect to know more as each case progresses.

WHAT SHOULD EMPLOYERS DO NOW?

In light of this order, employers likely will not need to comply with the Rule on September 4.

However, employers should monitor the pending challenges to the Rule as they may put the Rule back in play or alter the scope of this new nationwide injunction.



ABOUT KING & SPALDING

Celebrating more than 130 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 1,300 lawyers in 24 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality, and dedication to understanding the business and culture of its clients.

This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice. In some jurisdictions, this may be considered "Attorney Advertising." View our [Privacy Notice](#).

ABU DHABI	CHARLOTTE	DUBAI	LONDON	NORTHERN VIRGINIA	SILICON VALLEY
ATLANTA	CHICAGO	FRANKFURT	LOS ANGELES	PARIS	SINGAPORE
AUSTIN	DALLAS	GENEVA	MIAMI	RIYADH	TOKYO
BRUSSELS	DENVER	HOUSTON	NEW YORK	SAN FRANCISCO	WASHINGTON, D.C.
