

Legal Update: FTC's Non-Compete Ban Struck Down by Federal Judge

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Elizabeth F. Nicholson

By Elizabeth F. Nicholson on August 21, 2024

This recent [blog post](#) covered the Federal Trade Commission (FTC)'s final rule banning non-compete agreements nationwide. The rule states that a non-compete agreement or clause is an unfair method of competition, and as a result, is a [violation of the Federal Trade Commission Act Section 5: Unfair or Deceptive Acts or Practice](#). This rule was set to go into effect on September 4th, but on Tuesday a federal judge in Texas struck down the rule preventing it from taking effect in just a few weeks.

Last month, the Texas federal court judge, Ada Brown, temporarily blocked the rule, but her decision on Tuesday barred the rule from taking effect. In this case, a Texas employer, the U.S. Chamber of Commerce, alongside several other business organizations, sued the FTC in Federal Court seeking an order to block the non-compete rule.

The Court held that Congress only authorized the FTC to issue procedural rules to address unfair methods of competition, not substantive rules. The Court further ruled that the FTC does not have the authority to ban practices by adopting broad rules. In its opinion, the Court reasoned that, "the Commission's lack of evidence as to why they chose to impose such a sweeping prohibition ... instead of targeting specific, harmful non-competes, renders the Rule arbitrary and capricious."

The Texas federal court judge is the second federal judge to rule that the ban is likely invalid.

What Does This Mean for Employers and Employees?

Employers will not have to comply with the ban by September 4th. Instead, employers can maintain their non-compete agreements and clauses as their state laws allow. In South Carolina, [covenants not to compete are generally enforceable](#) if they meet the following criteria:

- (1) supported by valuable consideration;
- (2) necessary to protect the employer in some legitimate interest;
- (3) not unduly harsh and oppressive in curtailing the employee's legitimate efforts to earn a livelihood;
- (4) reasonably limited with respect to time and place; and
- (5) otherwise reasonable from the standpoint of sound public policy.

In South Carolina, employers may still require employees to sign and comply with non-compete agreements.

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If you have questions about how the ban on the FTC's rule affects your business or employment situation, our business and commercial litigation lawyers and employment lawyers are here to help. [Contact our office today.](#)