July 8, 2024

Texas Federal Court Enjoins, and Signals Readiness to Invalidate, the FTC's Non-Compete Ban

Client Bulletins

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After the Federal Trade Commission ("FTC") voted on April 23 to enact its nationwide ban on non-competes, employers and business organizations did not have to wait long—not even a day—before challengers began opposing the rulemaking as administrative overreach. In the action filed by Ryan, LLC in the Federal District Court for the Northern District of Texas, and in addition to asking the Court to invalidate the rulemaking as a whole, the plaintiff asked the Court to issue a preliminary injunction preventing the FTC from enforcing the rule until the Court could reach a final decision. The Court set a deadline of last Wednesday, July 3, to rule on the preliminary injunction request.

As scheduled, the Court issued its opinion last Wednesday. The opinion granted the motion for a preliminary injunction—but with a catch. Characterizing a preliminary injunction as an "extraordinary equitable remedy," the Court granted relief *only* to the plaintiffs in that lawsuit: Ryan, LLC, the U.S. Chamber of Commerce, and a handful of other business organizations. And the preliminary injunction means little to those plaintiffs, since the rule banning non-competes will not take effect until September 4, 2024, and the Court indicated that it intends to rule on the ultimate merits of the lawsuit (and the enforceability of the non-compete ban rule as a whole) by August 30 anyway.

That said, what is more telling than the fact that preliminary relief was granted to the plaintiffs is how the Court reached that decision. In order to rule in favor of the plaintiffs opposing the final rule, the Court had to make four critical findings: (1) that the final rule's opponents have "a substantial likelihood of success on the merits;" (2) that the rule posed "a substantial threat of irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in the [plaintiffs'] favor; and (4) that the injunction serves the public interest." In finding for plaintiffs on all four of these elements, the Court demonstrated, in no uncertain terms, that it intends to find the FTC's rule unenforceable as a whole and against *any* party (not just the parties to the lawsuit) when it reaches its final decision on or before August 30.

As we previously anticipated, the Supreme Court's recent decision striking down the *Chevron* doctrine, which for 40 years gave administrative bodies more authority than they are conferred under federal law, played a role in the Texas Court's decision. The Court reasoned that while "the FTC has some authority to promulgate rules to preclude unfair methods of competition . . . [it] lacks the authority to create substantive rules" through the statutory mechanism it relied on in issuing the non-compete ban. Among the Court's most crucial findings is that, ultimately, the plaintiffs "**are likely to succeed on the merits that the FTC lacks statutory authority to promulgate the Non-Compete Rule, and that the Rule is arbitrary and capricious.**"

Impact on Employers

The key takeaway from Wednesday's opinion is that, while it does not impact any businesses other than the plaintiffs yet, as predicted, the Court appears inclined to invalidate the non-compete ban, rejecting the FTC's overreach and leaving the business of legislating to legislators. Employers should

not take any action that would modify or extinguish their otherwise-enforceable non-compete agreements.

One of the other two challenges to the non-compete ban, brought by the U.S. Chamber of Commerce in another federal court in Texas, was dismissed after the Chamber of Commerce asked instead to participate in the Ryan, LLC litigation. The other challenge, brought by a tree service company in a Pennsylvania federal court, has an oral argument scheduled for this Wednesday, July 10, on the plaintiff's motion for a preliminary injunction. Depending on the speed of the Court in that case, it may issue a preliminary injunction that applies globally (rather than just to the named plaintiff), providing employers an additional layer of security between now and the Ryan, LLC Court's anticipated August 30 ruling. We will continue to provide updates on both remaining challenges to the non-compete ban as they develop.

For more information on this Final Rule or to learn how it can affect your business, contact a member of Benesch's Labor & Employment Practice Group.

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