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Client Alert



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Stop the Presses! Federal Court Sets Aside and Bars Effectiveness of FTC Non-Compete Rule

By **Michael J. Allen**

As we **previously reported**, in April 2024, the Federal Trade Commission (FTC) issued a Final Rule (16 C.F.R. § 910.1-.6) which, if it had become effective, would have banned virtually all worker “non-compete clauses.”

On August 20, 2024, in *Ryan LLC v. Federal Trade Commission*, Judge Ada Brown of the United States District Court for the Northern District of Texas entered a final summary judgment setting aside the FTC Non-Compete Rule and declaring that that rule “***shall not be enforced or otherwise take effect on September 4, 2024, or thereafter.***” In so ruling, Judge Brown concluded that the FTC lacks statutory authority to promulgate the Non-Compete Rule and the Rule is arbitrary and capricious and, as such, the FTC’s promulgation of the Rule is an unlawful agency action. Judge Brown made clear that her ruling and judgment shall have “nationwide effect” and does not apply merely to the plaintiffs in the *Ryan* suit.

Judge Brown’s August 20 judgment is a final and appealable order. As such, the FTC may elect to appeal her decision. In the meantime, the FTC Rule will not take effect.

What Employers Should Do Now

Employers will not need to prepare for compliance with the FTC Non-Compete Rule unless and until Judge Brown's ruling is overturned, which we believe is unlikely to happen.

The above said, and especially given that courts will continue to closely scrutinize employee non-compete clauses and other restrictive covenants, businesses should still take steps to protect their business interests (e.g., customer relationships, vendor relationships, trade secrets, and confidential information), including the following:

- Businesses should review and evaluate whether they have programs and policies in place that protect their business interests.
- Businesses should ensure that all elements of their programs and policies – including contracts with employees, independent contractors, and others – are adequate, appropriate, effective, enforceable under applicable law, and fully and properly implemented.
- Businesses that do not have a business interest protection program or do not use agreements to protect their business interests should promptly consider doing so.
- The above steps are best accomplished with the advice and assistance of knowledgeable counsel.

About the Author

Michael J. Allen dedicates his practice to protecting clients' rights and assets, including their contract rights and intellectual property rights, and he has decades of experience dealing with restrictive covenants. His rare blend of experience in negotiating, contracting, counseling, and litigation helps him provide meaningful insight to clients at all stages of their business relationships. Mike can be reached at 336-478-1190 or mja@crlaw.com.

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