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Update Regarding FTC's Ban on Non-Compete Agreements

On May 7, 2024, the Federal Trade Commission (FTC) issued a Final Rule that renders invalid non-compete clauses in standard employment agreements. 16 C.F.R. § 910. On July 3, 2024, the United States District Court for the Northern District of Texas issued a preliminary injunction barring the FTC from enforcing the Rule against the named plaintiffs in the Texas suit. The court declined to issue a nationwide injunction based on the record before it.

As discussed in a [previous alert](#), the new FTC Final Rule imposes a nationwide and retroactive ban on non-compete clauses, requiring employers to notify their current and former employees to tell them that existing non-compete agreements are void. Although the regulatory objective is to improve competitive conditions for employees, the Final Rule has significant implications for companies whose competitive edge depends on protecting their trade secrets from unauthorized disclosure.

In *Ryan, LLC v. FTC*, a tax software and services company challenged the FTC's authority to issue the Final Rule on multiple bases. Several associations, including the U.S. Chamber of Commerce, intervened. Plaintiffs challenged the FTC's statutory authority to issue a substantive rule of this nature, and also raised constitutional challenges to the FTC's authority. In granting the preliminary injunction, the district court concluded that "the text and the structure of the FTC Act reveal the FTC lacks substantive rulemaking authority with respect to unfair methods of competition." *Ryan, LLC v. FTC*, Case No. 3:24-CV—00986, Slip Op. at 19 (N.D. Tex., July 3, 2024).

Although Plaintiffs sought a nationwide injunction, the court limits the preliminary injunction to just the named Plaintiffs. In doing so, the court observed that "Plaintiffs have

offered virtually no briefing (or basis) that would support ‘universal’ or ‘nationwide’ injunctive relief.” Slip Op. at 31.

The court stated that it would issue a final decision on the merits no later than August 30, 2024.

Practical Implications: The Viability of Non-Compete Clauses

Because the court’s injunction in *Ryan, LLC v. FTC* is limited to the named plaintiffs, the decision does not change the obligation of other companies to comply with the FTC Final Rule by September 4, 2024. It is expected that the FTC will appeal the decision and it is unlikely that the Fifth Circuit will stay the injunction during pendency of any appeal. In addition, there are other pending legal challenges that could result in a nationwide injunction, but there is no guarantee that those will be resolved before the FTC Final Rule takes effect. As a consequence, companies should continue to take steps to abide by the Final FTC Rule while the legal challenges continue through the courts.

We will monitor this issue and provide updates as they become available. For questions, please reach out to Sterne, Kessler, Goldstein & Fox, including the contacts on this alert.

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