

Federal Judge Overturns FTC's Non-Compete Ban

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As we advised in our prior blog post, [the Federal Trade Commission \(FTC\) promulgated regulations banning enforcement of most post-employment non-compete restrictions](#). In the blog post we noted there was pending litigation and many commentators believed the regulations would be stricken, or, at the very least, delayed. With the regulations set to go into effect on September 4, 2024, on August 20, 2024, Judge Ada Brown of the United States District Court for the Northern District of Texas ruled against the FTC, striking down the regulations. In short, Judge Brown determined that the FTC lacked authority to adopt such rules.

Specifically, Judge Brown found that the FTC “exceeded its statutory authority in promulgating the Non-Compete Rule.” The FTC had promulgated the regulations relying on the power granted to it by the FTC Act, originally enacted in 1914. The FTC claimed that Section 6(g) of the FTC Act granted the agency authority to promulgate rules regarding unfair methods of competition. The Court rejected this argument, holding that Section 6(g) is a “housekeeping statute,” and does not authorize the FTC to promulgate “substantive rules” regarding competition.

The Court further deemed the non-compete ban “arbitrary and capricious because it is unreasonably overbroad without a reasonable explanation” and imposed a “one-size-fits-all approach with no end date, which fails to establish a rational connection between the facts found and the choice made.” The Court held that there was insufficient evidence of the FTC attempting alternates to the “sweeping prohibition,” and further stated that the FTC should have at the very least “target[ed] specific, harmful non-competes.”

The FTC has stated that it intends to challenge the ruling. This matter is still developing and we will supplement in a future blog post.

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