

# Preliminary Ruling Casts Doubt on FTC Final Noncompete Rule

July 8, 2024

On July 3, 2024, the United States District Court for the Northern District of Texas granted a preliminary injunction in *Ryan LLC v. Federal Trade Commission* (“*Ryan*”). The Court’s decision enjoined the [final rule](#) promulgated by the Federal Trade Commission (the “FTC”) that would ban nearly all post-employment noncompete agreements, and casts serious doubt on whether the FTC’s rule will ever become effective.<sup>1</sup> For the moment, the Court stayed the September 4, 2024 effective date of the final rule, but only for the specific plaintiffs in *Ryan* who challenged the rule. In doing so, the Court held that the plaintiffs are likely to succeed on the merits of their case, including on their argument that the FTC lacks authority to promulgate the final rule. The Court indicated that it will issue a final decision on the merits of the case on or before August 30, 2024.

The Court’s anticipated decision on the merits could include a broader, nationwide permanent injunction preventing enforcement of the rule. It is also possible that the United States District Court for the Eastern District of Pennsylvania could enter a broader injunction or conflicting opinion prior to August 30, 2024 in another pending litigation challenging the final rule, *ATS Tree Services, LLC v. Federal Trade Commission* (“*ATS*”). And, of course, the decisions at the district court level are subject to appeal. Thus, while the decision casts doubt on the FTC’s final rule, considerable uncertainty remains about whether, and if so, when, the final rule could go into effect.

## BACKGROUND

On January 5, 2023, the FTC proposed a new rule that would ban most post-employment noncompete agreements. On April 23, 2024, after collecting public comment over several months, the FTC issued its final rule, much of which was not changed from its proposed rule. On the same day that the final rule was promulgated, *Ryan LLC* and *ATS Tree Services, LLC* filed legal challenges to the enforceability of the rule in the Northern District of Texas and the Eastern District of Pennsylvania,

---

<sup>1</sup> Our Debevoise In Depth on the FTC’s final rule can be accessed [here](#).

---

respectively. The United States Chamber of Commerce and other business groups also filed suit and were permitted to intervene as plaintiffs in Texas in the *Ryan* action.

In its July 3, 2024 opinion in *Ryan*, the Court determined that the plaintiffs are likely to succeed on the merits of the case, which is a strong signal that the FTC's final rule is not ultimately likely to pass judicial review on the merits. In particular, the Court held that Section 6(g) of the Federal Trade Commission Act (the "FTC Act") does not grant the FTC authority to promulgate substantive rules regarding unfair methods of competition, including the final rule. The Court interpreted Section 6(g) as a "housekeeping statute," which authorizes the Commission to promulgate "rules of agency organization procedure or practice," but not substantive rules. Additionally, the Court found that later amendments to the FTC Act also did not affirmatively grant substantive rulemaking authority to the Commission.

The Court also found that the noncompete ban contained in the final rule violated the Administrative Procedures Act because the evidence put forth by the FTC in support of its rule was insufficient to justify the breadth of the ban. The Court wrote that there is a "substantial likelihood that the Rule is arbitrary and capricious because it is unreasonably overbroad without a reasonable explanation," and that the Commission "fail[ed] to establish a rational connection between the facts and the choice made."

The Court noted in particular that the FTC "relied on a handful of studies that examined the economic effects of various state policies toward non-competes," but "no state has ever enacted a non-compete rule as broad as the FTC's Non-Compete Rule." It found specifically that the FTC'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." Finally, it held that the FTC did not sufficiently address alternatives to issuing the rule.

As noted, the Court's preliminary injunction in *Ryan* only protects the plaintiffs in that case, including the U.S. Chamber of Commerce itself, but not its members, from the FTC's enforcement of the final rule.

#### WHAT HAPPENS NEXT?

The final rule is currently set to take effect on September 4, 2024, and further litigation challenging the final rule may still impact that timing.

---

The District Court in Texas indicated that it will issue its merits decision in *Ryan* on August 30, 2024, and that decision could have a more expansive reach than the current preliminary injunction motion.

Also of interest is parallel litigation pending in the United States District Court for the Eastern District of Pennsylvania in the *ATS* case. The Court in *ATS* has scheduled its oral argument regarding a motion for a stay and preliminary injunction for July 10, 2024 and is expected to issue its decision regarding the preliminary injunction on July 23, 2024.

Any decisions will likely be subject to appeals, including, eventually, to the United States Supreme Court. If a court does grant a nationwide injunction blocking enforcement of the final rule, then the effective date of the final rule will likely be stayed throughout the appellate proceedings and the final rule will only become effective if an appellate court reverses the district court's decision on the merits.

#### ADVICE FOR EMPLOYERS

Given that there is still a possibility that the final rule could take effect (including, potentially, on its original effective date of September 4, 2024), we recommend that employers continue to decide on the appropriate steps to take if the rule becomes effective. This includes:

- continuing to audit current noncompete programs, including for the purpose of identifying who may be subject to a noncompete that would be rendered invalid on the effective date of the rule;
- preparing notices to be sent to current and former covered employees with noncompetes if the rule takes effect;
- continuing to enhance trade secret protections beyond the use of noncompetes; and
- considering compensation changes and alternative arrangements, including garden leave arrangements, repayment agreements, retention bonuses or longer vesting periods for long-term awards (e.g., cliff-vesting or back-loaded schedules).

Equally importantly, employers should consider the state law landscape, which has been a source of significant change as more states find compelling local public policies in the areas of competition and worker mobility. These policy developments have to date only

---

been in one direction—making noncompetes harder to enforce—and the invalidation of the FTC final rule can reasonably be expected to invigorate more action at the state level.

\* \* \*

Please do not hesitate to contact us with any questions.



**Tim Cornell**  
Partner, Washington, D.C.  
+1 202 383 8062  
tjcornell@debevoise.com



**Jyotin Hamid**  
Partner, New York  
+1 212 909 1031  
jhamid@debevoise.com



**Ted Hassi**  
Partner, Washington, D.C.  
+1 202 383 8135  
thassi@debevoise.com



**Simone S. Hicks**  
Partner, Washington, D.C.  
+1 202 383 8210  
sshicks@debevoise.com



**Meir D. Katz**  
Partner, New York  
+1 212 909 6615  
mdkatz@debevoise.com



**Jonathan F. Lewis**  
Partner, New York  
+1 212 909 6916  
jflewis@debevoise.com



**Franklin L. Mitchell**  
Partner, New York  
+1 212 909 6104  
flmitchell@debevoise.com



**John (Jay) Neukom**  
Partner, San Francisco  
+1 415 738 5719  
jneukom@debevoise.com



**Michael Schaper**  
Partner, New York  
+1 212 909 6737  
mschaper@debevoise.com



**J. Michael Snypes, Jr.**  
Partner, New York  
+1 212 909 6319  
jmsnypes@debevoise.com



**Alison E. Buckley-Serfass**  
Counsel, Washington, D.C.  
+1 202 383 8084  
aebuckleyserfass@debevoise.com



**Tricia Bozyk Sherno**  
Counsel, New York  
+1 212 909 6717  
tbsherno@debevoise.com