# Texas Federal District Court Strikes Down FTC Non-Compete Rule

August 30, 2024

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**Employment Law Monthly**

On August 20, 2024, a Texas federal court struck down the FTC's Final Rule (Rule) banning most non-compete agreements, which was scheduled to take effect on September 4, 2024. The Texas court's decision means that employers will not have to comply with the Rule on its scheduled timeframe, if at all. While employers can breathe easier knowing that non-compete agreements are still legally binding for the time being, the Texas court's ruling is unlikely to be the final word on whether the Rule can ultimately go into effect.

The FTC has announced it is considering and evaluating an appeal of the Texas federal court's decision. In addition, at least one other federal court in Pennsylvania has determined preliminarily that the Rule should be allowed to take effect. These competing decisions likely will require resolution by appellate courts and, ultimately, the Supreme Court. For now, employers need not comply with the FTC rule and may resume their focus on their applicable state laws that have historically governed non-competes.

**Background of Legal Challenges to the Non-Compete Rule**

On Tuesday, April 23, 2024, the FTC issued the “Non-Compete Rule” banning most non-compete agreements between employers and their workers. The Rule was intended to prohibit employers from entering into and otherwise enforcing non-compete clauses in existing agreements, beginning on September 4, 2024. The Rule also would require employers to notify employees subject to such agreements that their agreements are no longer enforceable.

Legal challenges to the Rule began almost immediately. Lawsuits were filed in federal courts in Texas and Pennsylvania following the release of the Rule. In both cases, employers sought to temporarily halt enforcement and implementation of the Rule, arguing that the Rule was unlawful.

Initially, the Texas court granted the employer's request to enjoin the implementation of the Rule, finding that “the FTC lacks statutory authority to promulgate the Non-Compete Rule,” and that “the [Non-Compete] Rule is arbitrary and capricious.” However, that ruling was preliminary and, therefore, only applied to the parties to the Texas action, thus leaving open the question of whether the Rule is enforceable beyond those parties. Thereafter, the Pennsylvania court denied an employer's efforts to temporarily halt implementation and enforcement of the Rule, contrary to the Texas court's prior holding. These two contradictory initial rulings left employers confused and eagerly awaiting further court rulings that might add clarity to whether compliance would be required on the September 4 implementation date.

**The Texas Court's Final Ruling**

On August 20, 2024, the Texas court issued its final ruling on the lawfulness of the Rule. The court struck down the Rule, stating that "the [Non-Compete] Rule shall not be enforced or otherwise take effect on its effective date of September 4, 2024, or thereafter." The Texas court reaffirmed its preliminary decision that the FTC lacked the statutory authority to implement the Rule and, that Rule was arbitrary and capricious, and therefore unenforceable.

Unlike the preliminary rulings from the Texas and Pennsylvania courts, which were limited to the parties to the lawsuit itself, the Texas court applied its final ruling to all employers nationwide. The court was explicit in its opinion that its decision to set aside the Rule has a "nationwide effect," is "not party-restricted," and "affects persons in all judicial districts equally."

**Implications of the Texas Court's Final Ruling**

The Texas court's final ruling marks the first time a court has set aside the Rule on a nationwide basis. As a result of the ruling, the FTC cannot implement or enforce its Rule against any employer without violating the Texas court's final ruling. Accordingly, employers that have been preparing to comply with the Rule by September 4, 2024, may set those efforts aside, at least for now.

The Texas court's ruling likely will not be the final word on the Rule. The FTC has indicated it is considering appealing the ruling to the Fifth Circuit Court of Appeals. While it is possible that the FTC could succeed on appeal with a ruling that overturns the Texas court's decision and deems the Rule to be lawful, it is not likely that the Fifth Circuit would do so. Additionally, the Pennsylvania court, whose preliminary ruling was directly contrary to that of the Texas court, has yet to issue a final ruling in the case pending before it. Ultimately, unless the FTC withdraws the Rule, the United States Supreme Court will likely need to weigh in to resolve finally the lawfulness issue concerning the Rule.

**Impacts for Employers**

For now, the FTC is permanently enjoined from enforcing its non-compete rule, and employers do not need to prepare notices to former employees regarding the Final Rule. Employers may continue to enforce and enter into new non-competes, subject to any limitations imposed by state law. Therefore, employers should narrowly tailor and remain mindful of applicable state law in drafting and enforcing non-competes. In the event that the Texas court's decision is overturned and the Rule is found to be lawful, employers should be prepared to comply with the Rule.

The Porzio Employment Team is available to help employers draft hiring documentation compliant with the quickly evolving legal landscape and ensure employers understand their obligations should the Non-Compete Rule ultimately be upheld.