Insights: Alerts

Texas Federal Court Blocks FTC Non-Compete Ban Nationwide

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On August 20, 2024, a federal district court in Texas ruled the U.S. Federal Trade Commission ("FTC") cannot enforce its near-total ban on noncompete agreements that was set to go into effect in early September.

Kilpatrick previously reported about this lawsuit in July when the same federal court issued a preliminary injunction against the FTC's rule banning most non-competes (the "Non-Compete Rule"), but limited its injunction to just the named parties in the case. As part of that ruling, the court indicated it would issue a more fulsome opinion on the merits of the case by the end of August.

In the highly anticipated ruling issued yesterday, the federal district court held that while the FTC possessed some authority to promulgate rules to preclude unfair methods of competition, that authority is limited to "housekeeping" rules. That authority does not, the court explained, extend to substantive rules such as the Non-Compete Rule. This finding alone provided sufficient basis for the court to strike down the Rule. Nonetheless, the court went on to state that even if the FTC had the requisite authority to adopt the Non-Compete Rule, the agency's action in doing so was arbitrary and capricious since the rule was "unreasonably broad without a reasonable explanation." The court further explained that the FTC had not justified banning virtually all noncompete agreements—explaining: "[t]he [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."

Importantly, the court rejected the FTC's argument seeking to limit any relief to only the named plaintiffs. Instead, it held that the Administrative Procedures Act requires the Non Compete Rule to be "set aside" in its entirety on a nationwide basis. Therefore, the court ultimately opined "[t]he Rule shall not be enforced or otherwise take effect on its effective date of September 4, 2024 or thereafter."

It is expected that the FTC will appeal the decision to the Fifth Circuit Court of Appeals, and ultimately the U.S. Supreme Court. In the interim, the FTC will likely continue to examine individual non-competes in response to agency complaints. However, at this point, what is certain is that the Non-Compete Rule will not become effective on September 4, 2024, as previously intended.

If you have any questions about this Alert, the effects of the nationwide injunction, or defenses to the Rule's applicability, please contact one of the authors or the attorney(s) in our firm with whom you are regularly in contact.

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