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Texas Federal Court Sets Aside FTC's Non-Compete Rule, Halting It From Taking Effect on September 4, 2024

Law and the Workplace on **August 20, 2024**

On August 20, 2024, in *Ryan LLC v. Federal Trade Commission*, No. 3:24-cv-00986-E (N.D. Tex.), the United States District Court for the Northern District of Texas granted summary judgment to the plaintiffs and ordered the Federal Trade Commission's ("FTC") non-compete rule (the "Rule") to be set aside with respect to all employers nationally and that it shall not be enforced or take effect on September 4, 2024. The FTC may immediately appeal the court's decision to the Fifth Circuit.

Repeating the same reasoning it reached in granting a preliminary injunction on July 3, 2024, the court held that: (1) the FTC exceeded its statutory authority in issuing the Rule; and (2) the Rule was arbitrary and capricious under the Administrative Procedures Act ("APA"). The court found that Section 6(g) of the FTC Act, which the FTC relied on to issue the Rule, does not grant it authority to issue substantive rules, but is instead a "housekeeping statute," which only authorizes rules governing procedure or practice. The court found that the Rule was arbitrary and capricious because it imposed a "one-size-fits-all approach" that was insufficiently supported by the studies the FTC cited, which only addressed the economic effects of various state-specific laws on non-competes and not the categorical ban established by the Rule. The court also found that the FTC failed to consider the "positive benefits" of non-competes, disregarded the "substantial body of evidence" supporting them, and did not sufficiently address less disruptive alternatives to the Rule.

Having concluded that the FTC lacked authority and that the Rule was arbitrary and capricious, the court held that it was required by the APA to "hold unlawful and set aside" the Rule. The court rejected the FTC's argument that relief should be limited to the named plaintiffs, finding that the APA does not contemplate party-specific relief. Thus, the court ordered that the Rule shall not be enforced or otherwise take effect on September 4, 2024, or thereafter.

The FTC is likely to appeal the court's decision to the Fifth Circuit. We will keep you apprised of any developments.

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