

ARTICLES

## FTC's Nationwide Ban on Non-Compete Agreements Ruled Unenforceable

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By [Steven Cade](#) and Tyler Volm

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As reported in our prior article ([link](#)) in April, the FTC issued a final rule banning virtually all new non-compete agreements. The rule also renders unenforceable all existing non-compete agreements with employees who do not meet the criteria for a “senior executive.” Additionally, it requires employers to notify affected employees of the change before the rule’s effective date of September 4, 2024.

On August 20, 2024, the U.S. District Court for the Northern District of Texas in *Ryan, LLC v. FTC*, held that the FTC’s non-compete rule is unlawful and blocked enforcement nationwide. In setting aside the non-compete rule, Judge Ada Brown held that the Federal Trade Commission Act (“FTCA”) did not authorize the FTC to issue substantive rules like the non-compete ban and that the FTC’s authority is limited to the prevention of unfair methods of competition through case-by-case adjudication. Creating a rule that retroactively invalidated large swaths of existing contracts exceeded that statutory authority. Judge Brown also concluded that the rule was arbitrary and capricious because the FTC failed to present sufficient evidence to support a categorical ban and that the FTC had failed to consider less restrictive alternatives.

The FTC has until October 19, 2024 to appeal the decision to the U.S. Court of Appeals for the Fifth Circuit, and the final rule will remain unenforceable during any potential appeal. The Fifth Circuit’s recent rejection of federal agency rulemaking in *Restaurant Law Center v. U.S.*



*Department of Labor*, No. 23-50562 (August 23, 2024) indicates that the FTC's likelihood of success on appeal is unlikely. The agency is still authorized to restrict the use of non-compete agreements on a case-by-case basis. The outcome of the other two lower court cases is uncertain, but with the broad application of the *Ryan* decision, the other two cases may be moot.

Employers may continue to use non-compete agreements, but should remember to comply with state law for the state where the employee is performing services. States like Oregon and Washington require compliance with the applicable statute and non-compete agreements are still banned in California. Employers can still use confidentiality and non-solicitation agreements so long as they do not serve as disguised non-compete agreements.

## About the Authors

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