

Client Insight: Federal Court Blocks FTC's Nationwide Noncompete Ban Two Weeks before Implementation

Insights

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In a critical ruling for employers nationwide, a federal court has blocked the FTC's proposed ban on noncompete agreements (the "Rule"), just two weeks before it was set to take effect. In *Ryan LLC v. FTC*, the court delivered a rebuke of the FTC's actions, finding that the agency "lacks statutory authority to promulgate the [Rule]" and that the Rule is "arbitrary and capricious." The court ultimately concluded that the FTC's rulemaking process was an "unlawful agency action," warranting a nationwide injunction to prevent the Rule from taking effect.

While the FTC can appeal the decision, the court's ruling means that the ban on noncompete agreements will not be implemented in the foreseeable future, if ever. Employers who were preparing for the sweeping changes can cease those efforts.

Key Takeaways for Employers

- The Rule is unlikely to be implemented anytime soon, if ever – a significant setback for the FTC.
- Employers are not required to alter their current employment practices regarding noncompete agreements or issue notices pursuant to the blocked Rule.
- Noncompete agreements remain valid and enforceable if permitted under applicable state laws.

- Gunderson clients using our contract generator tool continue to have the option to include post-employment noncompetes in their Proprietary Information and Invention Agreements, in states where they are permitted under applicable state laws.
- Gunderson will continue to monitor any developments, including potential appeals in the *Ryan* case.

Background: FTC's Noncompete Rule and Initial Legal Challenges

On April 23, 2024, the FTC announced a nationwide ban on nearly all post-termination noncompete agreements. Within 24 hours of the FTC announcing the ban, employers started filing federal lawsuits, asking the courts to prevent the ban from ever taking effect. Those lawsuits include *Ryan LLC v. FTC* (N.D. Texas) and *ATS Tree Services v. FTC* (E.D. Pennsylvania).

On July 3, 2024, the court in *Ryan LLC v. FTC* granted a temporary injunction, blocking enforcement of the Rule, *but only* with regard to the named parties in the case. The *Ryan* court held that the preliminary evidence indicated the FTC did not have the authority to institute or enforce a nationwide ban on noncompete agreements and that the named parties in the case would suffer irreparable harm if they were forced to comply with the ban. The plaintiffs asked the court to expand the ruling to cover all employers in the U.S., but the court refused at that time. The court then set a briefing schedule, allowing all parties to present more evidence in support of their position. The court set a self-imposed deadline of August 30, 2024, to issue a ruling on the full briefing and evidence.

The Rule Will Not Take Effect

On August 20, 2024, the *Ryan* court made its preliminary ruling permanent, and, critically, expanded the scope to cover **all employers nationwide**. The *Ryan* court granted summary judgment in favor of the plaintiffs, ruling that the FTC's Rule exceeds the agency's statutory authority and is arbitrary and capricious under the Administrative Procedure Act (APA).

Specifically, the court held:

- The FTC lacks the statutory power to promulgate the sweeping ban on noncompete agreements. The court found that the text, structure, and history of the FTC Act do not grant the agency the authority to create such substantive rules regarding unfair methods of competition. A critical element in the court's reasoning was the lack of a penalty provision in Section 6(g) of the FTC Act. This

absence strongly indicates that Congress did not intend to give the FTC authority to create substantive rules with legal consequences.

- The Rule is arbitrary and capricious, as it imposes a categorical ban without a reasoned explanation or consideration of less disruptive alternatives. The court concluded that the Rule was unreasonably overbroad and not supported by the evidence in the record.
- The FTC's actions violated the APA, as the Rule was not in accordance with law and exceeded the FTC's statutory jurisdiction.
- It is the judiciary's role to interpret statutory provisions and reject agency actions that exceed statutory mandates or frustrate congressional intent.

On the basis of these findings, the court held that the Rule “is hereby **SET ASIDE** and shall not be enforced or otherwise take effect on September 4, 2024, or thereafter.” The *Ryan* court's decision makes it clear that the FTC's attempted ban on these agreements is unlawful and will not be implemented.

The decision in *Ryan* is a significant victory for employers who utilize noncompete agreements as part of their business operations. It is also a noteworthy loss for the FTC, which has expended massive amounts of time, effort, resources, and political capital in its mission to ban noncompetes, only to have a federal court broadcast that the FTC lacked the legal authority from the start and that its process was flawed.

In response to the ruling, an FTC spokeswoman stated that the agency “will keep fighting to stop noncompetes that restrict the economic liberty of hardworking Americans, hamper economic growth, limit innovation, and depress wages.” Additionally, the FTC is “seriously considering a potential appeal,” and notes that the decision in *Ryan* “does not prevent the FTC from addressing noncompetes through case-by-case enforcement actions.”

Potential Appeals and Other Legal Considerations

The FTC can appeal the ruling in *Ryan*, and will likely do so. The U.S. Court of Appeals for the Fifth Circuit, which would hear the appeal, has a reputation for being employer-friendly and it is reasonable to expect that the court will uphold the ruling in *Ryan*.

There is at least one inconsistent district court ruling out there, but its impact appears to be limited. On July 23, 2024, the federal district court in *ATS Tree Services v. FTC* issued a preliminary injunction in favor of the FTC. That court determined ATS failed to show irreparable harm or a likelihood of success on the merits and found the FTC

has the authority to issue a nationwide ban on noncompete agreements. The ruling in *ATS* appears limited in scope and is unlikely to disrupt the *Ryan* court's ruling. The inconsistent rulings may foreshadow a circuit split at the appellate level, which the U.S. Supreme Court would then ultimately need to resolve, likely several years from now. In the meantime, the FTC's ban is off the table.

Now What?

At this time, employers do not need to take any additional steps in response to the FTC's Rule. Noncompete agreements remain valid and enforceable, subject to applicable state laws.

Gunderson will continue to monitor any further developments in *Ryan* and *ATS*, but for now, the FTC's noncompete ban has been decisively rejected.

Please contact your Gunderson Dettmer attorney if you have any questions or concerns about this ruling and its implications for your business.

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