

EMPLOYER LAW BLOG

Employer Alert: Federal Judge Shoots Down FTC's Non-Compete Ban

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Employers may take a big sigh of relief: a federal judge in Texas issued a 27-page order declaring that the new FTC rule “shall not be enforced or otherwise take effect on its effective date of September 4, 2024 or thereafter.”

In her August 20 order, United States District Court Judge Ada E. Brown concluded “the FTC lacks statutory authority to promulgate the Non-Compete Rule, and that the Rule is arbitrary and capricious.”

Judge Brown analyzed the history and text of the law to conclude Congress gave the FTC substantive rulemaking authority to matters involving *unfair or deceptive practices*—not *unfair competition*.

Judge Brown also took issue with the non-compete rule's “one-size-fits-all approach” and noting, among other things, that no state has enacted such a broad rule prohibiting non-competes.

But the fight is likely not over. Most anticipate an appeal will follow. If it does, the case will go up to the Fifth Circuit Court of Appeals—a court known in recent years to be receptive of challenges to, and willing to scrutinize, the nature and scope of federal agency rulemaking authority.

Of course, now is still the right time to be thoughtful with your restrictive covenant strategy. We are here to assist, so don't hesitate to reach out.