

LEGAL UPDATES AND NEWS

FTC's Ban on Non-Compete Agreements – Recent Court Decisions

On May 7, 2024, the Federal Trade Commission (the “FTC”) published a final rule (the “Final Rule”) banning most non-competition agreements between an employer and an employee. We discussed the background, terms and exceptions to the Final Rule in a previous client alert which you can read [here](#). This client alert focuses on two recent court cases where parties challenged the Final Rule in federal district court.

On July 3, 2024, *Ryan, LLC v. Federal Trade Commission*, the U.S. District Court for the Northern District of Texas issued a preliminary injunction precluding enforcement of the Final Rule against the plaintiff, a global tax services and software provider. Notably, the injunctive relief is limited to the plaintiff and does not apply nationwide. The court intends to rule on the merits by August 30, 2024.

On July 23, 2024, the U.S. District Court for the Eastern District of Pennsylvania issued its order addressing the Final Rule, in *ATS Tree Services, LLC v. Federal Trade Commission*. The plaintiff, a tree removal service, filed a motion for a stay of the Final Rule’s effective date, which is September 4, 2024, and for a preliminary injunction preventing enforcement of the Final Rule. The court denied the plaintiff’s motion. The FTC’s victory in the Eastern District of Pennsylvania increases the likelihood of an appeal of the Final Rule.

State-chartered banks, national banks, savings and loan associations, and federal credit unions are exempt from the Final Rule while bank holding companies, savings and loan holding companies, and subsidiaries and other affiliates of banks are all subject to the Final Rule. We continue to recommend that employers determine whether the Final Rule applies to their agreements and if so, companies should be prepared to comply and provide required notices, when necessary. Employers should also be prepared to respond to regulatory questions regarding the continued validity of non-competition clauses contained in executive employment agreements. Pending or forthcoming legal challenges may potentially delay or prevent the Final Rule from becoming effective.

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