

## CLIENT ALERT: Texas Court Strikes Down FTC Noncompete Ban

On August 20, 2024, United States Court District Judge Ada Brown **ruled** that the Federal Trade Commission (“FTC”) lacked the authority to promulgate and enforce its **Non-Compete Clause Rule** (the “FTC Noncompete Ban”). The Court’s ruling is applicable nationwide and eliminates – for now – the uncertainty that employers and employees were facing. Simply put, the FTC Noncompete Ban that would have barred most post-employment noncompetition covenants is no longer set to go into effect.

By way of background, on April 23, 2024, the FTC issued FTC Noncompete Ban **to prohibit the use of employee non-compete clauses** (with limited exceptions). The FTC Noncompete Ban was scheduled to go into effect on September 4, 2024, which would have eliminated the enforceability of noncompetes, and required employers to provide a written notice to workers by September 4, 2024, educating workers about the FTC Noncompete Ban and the lack of enforceability of their noncompetes. The FTC Noncompete Ban came under immediate legal challenge in multiple courts, including *Ryan LLC v. FTC* pending before Judge Brown in Texas. On July 3, 2024, Judge Brown **enjoined the FTC** from implementing the FTC Noncompete Ban, although limited the relief to the parties in the case. Judge Brown anticipated issuing a decision on the merits of the case on August 30 – just days before the FTC Noncompete Ban was to go into effect. Rather than wait until August 30, Judge Brown issued her decision on August 20.

In reaching her decision to strike down the FTC Noncompete Ban, Judge Brown concluded that that the FTC acted “in excess of its statutory authority” and that the FTC Noncompete Ban is “arbitrary and capricious.” As a result, the Court must “hold unlawful” and “set aside” the FTC Noncompete Ban. As a result of this decision, the FTC Noncompete Ban “shall not be enforced or otherwise take effect on its effective date of September 4, 2024.”

The FTC has stated it is considering its options to appeal the decision. Further, the FTC takes the position that it has the authority to regulate post-employment restrictions on a case-by-case basis, regardless of the legality of its rule-making authority and process.

While the FTC Noncompete Ban is no longer looming (for now), employers should consult with their MBJ attorney with questions about restrictive covenants, the efforts by various federal agencies such as the National Labor Relations Board and FTC to regulate restrictive covenants, and the patchwork of state laws and their range of approaches to post-employment restrictive covenants.

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