

CLIENT ALERT: Texas Judge Finds FTC Noncompete Rule Likely Unlawful But Limits Scope of Relief

On July 3, 2024, federal district court Judge Ada Brown (N.D. Texas) issued an order enjoining the FTC from implementing its **Final Rule on Non-Competes** ("Final Rule"), but limited the injunctive relief to only those parties before her and declined, for now, to apply the injunction nationwide. This limited relief is likely to cause more confusion as the Final Rule's implementation date of September 4, 2024, fast approaches.

The Final Rule broadly prohibits employers from using employee non-compete agreements. See **MBJ's May 9, 2024 client alert** describing the Final Rule in more detail.

If upheld, the Final Rule would radically change how businesses operate and eliminate the use of many types of post-employment restrictive covenants typically used to protect confidential information and customer goodwill. Upon its publication in May 2024, business groups immediately filed legal challenges seeking to delay or eliminate the Final Rule.

In *Ryan LLC, et al. v. FTC*, before Judge Brown, the plaintiffs argued that the Final Rule exceeds the FTC's statutory authority and violates the Administrative Procedures Act because it was a product of flawed rule-making. In issuing the **preliminary injunction** enjoining implementation of the Final Rule, Judge Brown found that the plaintiffs were substantially likely to succeed on the merits of their legal challenge.

Importantly, the Court's order is limited to the plaintiffs and plaintiff-intervenors in the case – a coalition of business groups and the tax service firm Ryan, LLC. The Court's order does not apply nationwide or to the members of the U.S. Chamber of Commerce or other plaintiff associations. Judge Brown has stated the Court's intention to issue a final ruling, including potentially on application of the injunction nationwide, by August 30.

For now, the Final Rule is still scheduled to become effective on September 4, 2024, nationwide (except as to the plaintiffs in *Ryan LLC v. FTC*); however, the July 3 decision further puts into doubt whether the majority of employers in the U.S. will be subject to the Final Rule.

The *Ryan* case is just one of the legal challenges asserting that the FTC lacks the authority to prohibit noncompetition agreements. MBJ will continue to monitor the developments. While we wait for the outcome of the legal challenges to the Final Rule, employers should continue to assess which of their employees has any form of a non-compete agreement so they are prepared to take action if the Final Rule is ultimately implemented. Employers are encouraged to contact their MBJ attorney with any questions about drafting and enforcing noncompetition agreements.

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This alert was prepared on July 8, 2024.

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