FTC's Noncompete Ban On Hold…For Parties Involved in Lawsuit



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On July 3, 2024, a federal judge from the Northern District of Texas barred the Federal Trade Commission ("FTC") from enforcing its Rule banning noncompete agreements and paused the Rule's effective date of September 4, 2024. However, the judge limited the scope of her preliminary order to the plaintiff (Ryan LLC) and plaintiff-intervenors (the U.S. Chamber of Commerce and other business associations), declining to pause the Rule nationwide. As a result, for all other employers, this Rule is still set to take effect on September 4, absent further action by this court or another court in which a challenge to the Rule is pending.

The challenged Rule broadly bars employers from entering noncompete agreements with employees, invalidates existing agreements except for highly compensated individuals in a policymaking position, and requires employers to provide notice to current and former employees bound by existing agreements that the agreement will not be enforceable once the Rule takes effect.

In siding with the plaintiff and plaintiff-intervenors, the judge reasoned that the FTC lacked statutory authority under Section 6(g) of the Federal Trade Commission Act ("FTC Act") because it is a "housekeeping statute" that only authorizes procedural—not substantive—rulemaking. She reached this conclusion by looking to "the text, structure, and history of the FTC Act." The judge further concluded that the Rule violates the Administrative Procedure Act's prohibition against arbitrary and capricious rules "because it is unreasonably overbroad without a reasonable explanation." Employers should keep in mind that these conclusions were based on a "substantial likelihood" of success on the merits, signaling the judge will likely (but not certainly) rule in favor of the plaintiff and plaintiff-intervenors.

Because this order is limited to the plaintiff and plaintiff-intervenors, most employers are left without a clear path forward. Employers may gain further clarity on the Rule's scope and effect in the coming months because (1) the judge in this case is set rule on the merits by the end of August (although that may occur just days before the Rule is set to go into effect), and (2) another federal judge from the Eastern District of Pennsylvania is expected to rule on the same issue in a separate matter toward the end of July.

In the meantime, employers should consult with legal counsel and continue following the guidelines outlined in Holland & Hart's earlier article. Employers may want to continue waiting to issue notices to individuals with

existing noncompete agreements until the scope and effect of the Rule become more certain.

Holland & Hart is following legal challenges to this Rule closely and will provide updates as they become available.

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