



Annie Stuller

Associate  
303.293.5185  
Boulder  
alstuller@hollandhart.com

## Second Decision on FTC's Noncompete Ban Is In

**Insight — July 31, 2024**

On July 23, 2024, a federal judge from the Eastern District of Pennsylvania declined to issue a preliminary injunction that would block the Federal Trade Commission's ("FTC") rule banning most noncompete agreements, current and future, that is set to take effect on September 4 ("Rule").

In reaching this decision, the judge concluded that the plaintiff failed to demonstrate a substantial likelihood of success on the merits. First, the judge rejected the plaintiff's argument that Section 6(g) of the Federal Trade Commission Act ("FTC Act" or "Act") only authorizes procedural rulemaking, explaining it "is inherently inconsistent and therefore untenable" to read the word "procedural" but not "substantive" into the FTC Act when neither word appears within the Act. She explained, "it [is] clear that the FTC is empowered to make both procedural and substantive rules as is necessary to prevent unfair methods of competition." Second, unpersuaded by the plaintiff's supporting reasons, the judge rejected the plaintiff's alternative argument that—even if the FTC Act empowers the FTC with authority to make substantive rules—the FTC exceeded its authority by banning all noncompete agreements.

Because this decision conflicts with an earlier decision by a federal judge in the Northern District of Texas, the enforceability of the Rule remains unsettled. As a result, all eyes turn back to the judge sitting in Northern District of Texas, who is expected to rule on the merits of the Rule by August 30, and to a judge sitting in the Middle District of Florida who is expected to rule on the same issue. Until we receive an answer on the Rule's enforceability, employers should consult with legal counsel and continue following the guidelines outlined in Holland & Hart's earlier article on the Rule.

---

*Subscribe to get our Insights delivered to your inbox.*

*This publication is designed to provide general information on pertinent legal topics. The statements made are provided for educational purposes only. They do not constitute legal or financial advice nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys other than the author(s). This publication is not intended to create an attorney-client relationship between you and Holland & Hart LLP. Substantive changes in the law subsequent to the date of this publication might affect the analysis or commentary. Similarly, the analysis may differ depending on the jurisdiction or circumstances. If you have specific*

*questions as to the application of the law to your activities, you should seek the advice of your legal counsel.*