

U.S. District Judge Strikes Down FTC’s Rule to Ban Non-Compete Agreements

August 21, 2024

Source: Saiber Employment Law Alert

On April 23, the FTC issued a final Rule banning non-compete agreements between employers and workers. The FTC Rule was scheduled to take effect on September 4, and plaintiffs in at least three litigations challenged the FTC’s authority to issue the rule.

On August 20, in Ryan LLC v. FTC, the US District Court for the Northern District of Texas issued an Opinion and Order granting summary judgment in favor of the plaintiffs, and setting aside the FTC Rule banning non-compete agreements. The Court concluded that the FTC exceeded its statutory authority by issuing such a sweeping, substantive rule, and that the rule itself was arbitrary and capricious. This means that the FTC Rule will not be enforced and will not take effect on September 4, or thereafter. The FTC has indicated that it is considering an appeal, and in a case pending in the Eastern District of Pennsylvania, the Court has signaled that it may reach the opposite conclusion. Therefore, the viability of the FTC Rule could make its way to the Supreme Court, but in the interim, it will have no effect.

While the decision was a blow to the FTC’s effort to implement a nationwide ban on non-competes, it does not suggest that non-competes are any more, or less, enforceable than they were before the FTC Rule was issued. The enforceability of a non-compete agreement is governed by state law. In states like California and Minnesota where non-competes are statutorily unenforceable, they remain unenforceable. In New Jersey, the law that has been developed over decades remains in effect—the enforceability of a non-compete is determined by a balancing of the employer’s legitimate business interest and the hardship imposed on the employee.

It has been a rollercoaster ride with the FTC Rule, but we are back where we started. The enforceability of a non-compete depends upon which state’s law applies, and the specific facts and circumstances of each case.