HINSHAW

Texas Federal Judge Strikes Down FTC's Noncompete Ban

2 min read

Aug 21, 2024

By: Tom H. Luetkemeyer

On August 20, 2024, Judge Ada Brown of the United States District Court for the Northern District of Texas set aside and barred the nationwide implementation and enforcement of the FTC's Final Noncompete Rule.

As indicated in our previous blog post, Judge Brown granted a preliminary injunction against the enforcement of the FTC's Final Noncompete Rule. However, the decision was limited to the parties to the lawsuit. The Court deferred broader relief of its decision to August 30.

In the August 20th decision, Judge Brown held that the FTC's "Rule shall not be enforced or otherwise take effect on its effective date of September 4, 2024." The Court held that while the FTC had some authority to promulgate rules to preclude unfair methods of competition, the "FTC lacks the authority to create substantive rules through this method." The Court noted that the "lack of a penalty" found within the FTC's Act supports the conclusion that it "encompasses only housekeeping rules, not substantive rulemaking power." Also, the Court explained that after reviewing the FTC Act's text and structure, it determined that the "FTC lack[ed] substantive rule-making authority with respect to unfair methods of competition." Therefore, the Court concluded that the FTC exceeded its statutory authority in promulgating the Noncompete Rule.

In addition, the Court found that the Final Noncompete Rule is arbitrary and capricious because it is "unreasonably overbroad without a reasonable explanation. The Rule imposes a one-size-fits-all approach with no end date." The Court said that no state has ever enacted a noncompete rule as broad as the FTC's Final Rule. The Court determined that the Final Rule was inconsistent, based on flawed empirical evidence, failed to consider the positive benefits of noncompete agreements, and disregarded a substantial body of evidence supporting these types of agreements. Additionally, the Court noted that the FTC insufficiently addressed alternatives to issuing the Rule.

Judge Brown rejected the FTC's argument that relief should be limited to only the named plaintiffs. Instead, Judge Brown held that the Administrative Procedure Act "does not contemplate party-specific relief," thus the "Court must 'hold unlawful' and 'set aside' the FTC's Non-Compete Rule."

The FTC could appeal the decision to the Fifth Circuit Court of Appeals. Had the District Court not set aside the Final Rule, employers would have been prohibited from entering into new noncompete agreements and would have had to notify employees that their noncompete agreements were not enforceable.

As for now, employers and companies using noncompetes can continue their current practices. Nevertheless, employers should take this opportunity to review their noncompete agreements to ensure that they comply with applicable state and local laws.

Hinshaw & Culbertson LLP is a U.S.-based law firm with offices nationwide. The firm's national reputation spans the insurance industry, the financial services sector, professional services, and other highly regulated industries. Hinshaw provides holistic legal solutions—from litigation and dispute resolution, and business advisory and transactional services, to regulatory compliance—for clients of all sizes. Visit www.hinshawlaw.com for more information and follow @Hinshaw on LinkedIn and X.

Topics

Non-Compete, Employment, FTC, Employer, Employee, Labor And Employment, Federal Trade Commission

Related Capabilities

Labor & Employment