

Long Live Non-Competes (For Now): Texas District Court Vacates FTC Rule Banning Them

August 21, 2024

In an order issued yesterday, Judge Ada Brown of the U.S. District Court for the Northern District of Texas declared that the U.S. Federal Trade Commission’s (the “*FTC’s*”) final rule¹ banning most non-competes in the United States *is unlawful and vacated it on a nationwide basis*. The rule was set to go into effect on September 4, 2024.

Judge Brown’s decision means that, for now, non-competes will remain enforceable in the U.S. (subject to applicable state law) and employers are no longer required to provide notice to employees currently subject to a non-compete by the September 4, 2024 deadline originally mandated by the rule.

In support of her decision to set aside the FTC’s rule, Judge Brown held that the FTC promulgated the rule in excess of its statutory authority and that the rule is arbitrary and capricious. Key to her decision were the findings that the FTC relied on insufficient evidence or justification to support a categorical ban on non-competes and failed to address potential alternatives to the rule.

We anticipate that the FTC will appeal this decision to the Fifth Circuit, so litigation over the FTC’s rule is likely not over yet. The FTC will have sixty (60) days following the entry of judgement to file any such appeal. In the meantime, employers may continue to use non-competes to protect their business interests under applicable state law.

Please contact any of the authors or your regular Cleary Gottlieb contacts if you have questions or would like to discuss further.

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¹ FTC Non-Compete Clause Final Rule (16 C.F.R. Part 910), available [here](#). Our summary of the rule and of subsequent events can be found [here](#), [here](#) and [here](#).

