

## Employment

July 23, 2024

## FTC Non-Compete Update: Pennsylvania Federal Court Declines to Stop FTC Non-Compete Ban

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On July 23, 2024, the United States District Court for the Eastern District of Pennsylvania threw its hat into the ring of cases addressing the Federal Trade Commission's (FTC) non-compete ban (the Non-Compete Final Rule), declining to grant a preliminary injunction staying the Non-Compete Final Rule. Specifically, the court concluded that the challenger of the rule had failed to show irreparable harm to support an injunction, and was unlikely to win on the merits of its case that the FTC lacks statutory or constitutional authority to impose the ban.

This specific case, *ATS Tree Services LLC v. FTC*, was filed in April 2024, just two days after the FTC voted 3-2 to approve the Non-Compete Final Rule, which, if it goes into effect as currently scheduled on September 4, 2024, will ban almost all existing and new non-compete agreements for all workers across the country. ATS, a small Pennsylvania tree service company with only 12 employees, had argued that the FTC lacks statutory authority to create substantive rules preventing unfair methods of competition and to impose such a broad non-compete ban. ATS also had alleged that the FTC exceeded its statutory authority under the FTC Act, by, among other things, imposing national regulation on noncompete agreements that are traditionally regulated on a state level.

As we previously detailed [here](#), on July 3, 2024, the United States District Court for the Northern District of Texas entered a limited preliminary injunction in *Ryan, LLC v. FTC*, staying the Non-Compete Final Rule only as to the specific plaintiffs and plaintiff-intervenors in the case. The Texas court declined to issue a nationwide injunction at that stage of the case. However, in stark contrast to what the *ATS* court in Pennsylvania has now held, the Texas court concluded that the plaintiffs in that case were likely to succeed on the merits of their case, signaling that the Texas court may be inclined to put a stop to the Non-Compete Final Rule when it issues its ruling on the merits in late August.

Given the conflict between the *Ryan* case in Texas and the *ATS* case in Pennsylvania, further appellate review seems imminent. In addition to the two pending cases in Texas and Pennsylvania, the Middle District of Florida recently entered the fray. In a case filed on June 21, 2024, *Properties of the Villages Inc. v. FTC*, a Florida corporation selling real estate in a 55+ adult community, has asked the federal court in Florida to enjoin the Non-Compete Final Rule with similar arguments that the FTC lacks substantive rulemaking authority over unfair methods of competition and an assertion that the Non-Compete Final Rule violates the Commerce Clause of the U.S. Constitution. While there is no date currently announced for the court's ruling, the plaintiff has urged the Florida court to issue a decision before the Non-Compete Final Rule goes into effect in September.

The long and short of these various legal challenges is that the Non-Compete Final Rule remains in flux and subject to attack at many angles, with inconsistent outcomes now in two federal courts. We will continue to monitor the situation and keep you updated.

Please contact the authors or any other Lowenstein Sandler attorney with whom you regularly work if you have any questions. The authors thank Joy Kemunto, a summer associate, for her assistance with this alert.

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