

Employment

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Non-Compete Update: Florida Court Enjoins FTC Non-Compete Rule Only for Specific Plaintiff

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As has been reported, the Federal Trade Commission (FTC) issued the FTC Non-Compete Final [Rule](#) (the Non-Compete Final Rule) that is scheduled to become effective on Sept. 4, 2024, banning employment non-competes nationally, subject to very few exceptions.

In early July, we [reported](#) on *Ryan, LLC v. FTC*, a decision in which a Texas federal district court issued an injunction barring the Non-Compete Final Rule from becoming effective, but only as to the specific plaintiffs in that case. The plaintiffs and amicus parties have moved to expand the scope of the court's decision to apply nationally, beyond just the specific plaintiffs in the case, and the court's scheduling order reflects that the judge intends to issue a decision on that application on or before Aug. 30, 2024. With the ban otherwise scheduled to take effect on Sept. 4, businesses don't have much time to plan their next course of action.

In mid-July, in *ATS Tree Services, LLC v. FTC*, another plaintiff sought to challenge the Non-Compete Final Rule in Pennsylvania. However, the Pennsylvania judge ruled in the FTC's favor and declined to enjoin the Non-Compete Final Rule from becoming effective, as reported [here](#).

Just earlier this week, a Florida court also faced with a challenge to the Non-Compete Final Rule issued a [decision](#) in *Properties of the Villages Inc. v. FTC* enjoining the Non-Compete Final Rule from taking effect, but only for the specific plaintiff in that case. In doing so, the Florida court held that under the major questions doctrine, the FTC had overstepped its legal authority in imposing the Non-Compete Final Rule because a topic as major as a non-competes ban belongs to Congress and not to an administrative agency such as the FTC.

Proponents of non-competes had hoped that the Florida court would issue a more expansive ruling, but at this juncture, the decision is limited only to the specific plaintiff in that action, leaving national businesses without any recourse beyond the highly anticipated *Ryan* court decision expected on or before Aug. 30.

What should businesses do in the meantime? With Sept. 4 rapidly approaching and to avoid the last-minute Labor Day weekend scrambling that will inevitably occur between Aug. 30 and Sept. 4, businesses should be reviewing their employee population now to determine what agreements employees have signed and who might meet the extremely narrow definition of "senior executive" under the Non-Compete Final Rule, and otherwise begin to prepare their required notices in line with the FTC's model notice ([link here](#) at page 566).

Lowenstein Sandler's Executive Compensation, Employment & Benefits Group would be pleased to speak with you about the Non-Compete Final Rule and what steps, if any, you should be taking to ensure compliance by Sept. 4.

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