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## FTC Finalizes Non-Compete Rule – Prohibiting All New Non-Compete Agreements

By [Jordan B. Schwartz](#)

As many of you may have heard by now, on April 23, 2024, almost exactly one year after it set forth its Proposed Rule regarding Non-Compete Clauses, the Federal Trade Commission (FTC) issued a pre-publication version of its final [Non-Compete Clause Rule](#) (the “Final Rule”). Barring judicial interference, the Final Rule will go into effect in August (120 days after it is published in the Federal Register).

The Final Rule bans nearly all non-compete agreements between employers and workers – including employees, independent contractors, and even unpaid workers. Indeed, under the Final rule, an employer generally will be prohibited from entering or attempting to enter into a non-compete with a worker, maintaining a non-compete with a worker, or representing to a worker that the worker is subject to a non-compete. The Final Rule will also require employers to cease enforcement of existing non-competes (aside from agreements with Senior Executives, as defined by the Rule) and actively inform workers that existing non-compete clauses will no longer be enforced. The FTC will provide model language to help employers comply with the notification requirements.

As expected, the Final Rule has sparked immediate legal challenges, led by the U.S. Chamber of Commerce – arguing that the FTC has exceeded its regulatory authority. The lawsuit was filed in a U.S. District Court in Texas, only one day after the FTC announced the Final Rule. The core of the lawsuit is the assertion that the FTC does not have the statutory authority to define what constitutes unlawful methods of competition to this extent. The Chamber of Commerce argued, among other things, that the sweeping nature of the Final Rule, which applies broadly across all levels of employment represents an overreach of the FTC’s powers as it lacks the authority to prohibit unfair methods of competition through rulemaking and that as a result of this Final Rule, “millions of workers and businesses will instantly lose bargained-for contractual protections.” These arguments challenge the FTC’s power to create such a rule and the extent of its influence on the economy.

Others, including Ryan LLC which filed a separate lawsuit in the Northern District of Texas, argue that non-compete agreements are vital for protecting trade secrets and investing in employee training without the risk of them immediately joining a competitor. The choice of Texas as the venue for these lawsuits could be strategic, placing the cases in front of conservative judges and potentially the Fifth Circuit Court of Appeals, known for its conservative leanings.

Notably, the Chamber of Commerce ended up joining the Ryan case soon after it was filed, and now it is the most likely case to affect the Final Rule. This court already issued a preliminary injunction against the Final Rule earlier this summer, although that injunction only applies to the plaintiffs in that case (a nationwide injunction was denied due to insufficient briefing). However, a decision on summary judgment is expected prior to September 4, 2024, which could deny the injunction, keep the narrow injunction, expand the injunction, or invalidate the Final Rule in its entirety.

Thus, although the Final Rule is still scheduled to go into effect on September 4, 2024, there are ongoing legal challenges to it that could upend the Rule in its entirety.

It will be interesting to say the least to follow these lawsuits, and the others that inevitably arise, as many expect these challenges to be successful. We will continue to closely monitor the status of the Final Rule and will keep you apprised of any developments.

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