

Employment & Labor Law Alert

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Federal Judge Permanently Blocks the FTC's Rule Banning Postemployment Noncompetes

As we anticipated in our [May 2024 alert](#), a federal judge has blocked the Federal Trade Commission's final rule that would have banned nearly all postemployment noncompete agreements. Judge Ada E. Brown of the Northern District of Texas issued a decision Tuesday that "holds unlawful and sets aside the Rule" on a nationwide basis. The rule will not go into effect on Sept. 4, 2024, or at any point in the future, unless revived on appeal (the prospect of which seems unlikely).

Judge Brown's decision was based on two key conclusions

- First, that the FTC exceeded its statutory authority in issuing the rule. Congress vested in the FTC the authority to "prevent unfair methods of competition" and "prevent unfair or deceptive acts or practices." The FTC is empowered to do so through administrative proceedings, such as hearings and the issuance of cease-and-desist orders. The FTC is also authorized to "[f]rom time to time . . . make rules and regulations for the purpose of carrying out the provisions of this subchapter." But, according to Judge Brown, the FTC lacks substantive rulemaking authority to prevent unfair methods of competition.
- Second, the court found that the rule was arbitrary and capricious because it was "overbroad without a reasonable explanation." The court criticized the FTC's "one-size-fits-all approach" and cited more tailored state laws, such as those banning noncompetes only for low-wage workers, as proof that the FTC could have taken a narrower approach.



On those bases, Judge Brown held the rule unlawful. The FTC may choose to appeal the decision to the Fifth Circuit, but it will face a tough battle there and, if the case were to proceed further, in front of a U.S. Supreme Court that has repeatedly curtailed the power of and deference to federal agencies. For now, employers can rest assured that they are unlikely to see the rule revived in the near future. Nonetheless, employers should ensure that any restrictive covenants implemented comply with the growing number of state laws in this area and are narrowly tailored to protect the employer's legitimate business interests.

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