

CLIENT ALERT

Navigating Compensation Governance

Federal Court Issues Limited Stay on FTC Ban on Noncompetes

A federal judge has stayed implementation and enforcement of the Federal Trade Commission ban on noncompete arrangements.

However, the stay relates *solely* to the plaintiffs and to *no* other business entities.

In the stay order, the judge observed that the FTC likely exceeded its authority in issuing the ban.

The Court will rule on the merits of the case against the ban by August 30, 2024.

Background

Historically, the federal government has not pre-empted states' authority to permit or regulate noncompetition agreements and provisions. On April 23, 2024, the FTC adopted final rules which changed the legal landscape by broadly banning noncompete arrangements.

The rule declares noncompete provisions to be unfair methods of competition under Section 5 of the FTC Act and would bar nearly all types of business entities, including private and public companies, from entering into noncompete provisions with workers, including "senior executives."¹ That rule was scheduled to go into effect on September 4, 2024.

Challenge to FTC Ban on Noncompete Arrangements

Immediately after the rule was adopted, the tax firm Ryan filed a lawsuit in the Northern District of Texas (**Ryan LLC v FTC**) challenging the rule. The U.S. Chamber of Commerce, which filed a similar lawsuit, later joined the plaintiff in **Ryan** in asking the court to vacate the ban and to issue a preliminary injunction to stay the effectiveness of the rule pending the outcome of the case.

On July 3, 2024, the court granted a preliminary injunction, thereby stopping the rule from taking effect until the case is resolved. The Court found that "the text, structure, and history of the FTC Act reveal that the FTC lacks substantive rulemaking authority with respect to unfair methods of competition" and that the rule is unreasonably overbroad.

The ruling is narrow, with the court declining to grant nationwide relief and staying the effective date of the rule solely to plaintiff-Ryan.² However, the court also stated that it would rule on the merits of the case – including whether to permanently enjoin enforcement of the rule – by August 30, 2024, (less than a week before the

¹ For more detail about the contours of the rule, see [Meridian's Client Alert dated April 25, 2024](#).

² The court declined to extend its ruling to member companies of the Chamber of Commerce.

scheduled September 4, 2024, effective date of the rule). The judge has strongly signaled that she will rule against the FTC.

A ruling against the FTC would likely mean that the court would enter a limited or nationwide permanent injunction or vacate the rule. However, as the timing and the substance of the judge’s ruling are uncertain, we suggest companies proceed cautiously by assuming the ban takes effect and taking the following limited actions: (i) inventory existing non-compete agreements, (ii) identify those that will be enforceable (i.e., those covering “senior executives”) and those that will be unenforceable on and after September 4, 2024 and (iii) determine which affected employees must be notified that their non-compete agreements are no longer enforceable.

Separately, a federal judge in the Eastern District of Pennsylvania is set to hear oral arguments in a similar lawsuit (**ATS Tree Services, LLC v. Federal Trade Commission**) against the FTC ban on noncompete arrangements on July 10, 2024. The judge could issue a limited or nationwide injunction on the ban or potentially side with the FTC, which would further muddy the waters.

Meridian will continue to monitor and report on future rulings and developments.

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The *Client Update* is prepared by Meridian Compensation Partners’ Governance and Regulatory Team led by Donald Kalfen. Questions regarding this Client Update or executive compensation technical issues may be directed to Donald Kalfen at 847-347-2524.

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