

CLIENT ALERT

Navigating Compensation Governance

Pennsylvania Federal Court Fails to Grant Preliminary Injunction Regarding the FTC's Ban on Noncompete Arrangements

A federal judge in Pennsylvania has denied a request for a preliminary injunction to stay the implementation and enforcement of the Federal Trade Commission ban on noncompete arrangements.

The judge observed that the FTC was likely within its authority to broadly ban noncompete arrangements.

This contrasts with an earlier decision by a Texas federal judge who granted a limited stay on the noncompete ban and observed that the FTC likely did not have the authority to ban noncompete arrangements.

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 is scheduled to go into effect on September 4, 2024.

Challenge to FTC Ban on Noncompete Arrangements

Shortly after the rule was adopted, two separate lawsuits were filed seeking to stay the implementation and enforcement of the noncompete ban, one in Texas (**Ryan LLC v Federal Trade Commission**) the other in Pennsylvania (**ATS Tree Services, LLC v. Federal Trade Commission**).

On July 23, 2024, the judge in the *ATS Tree Services* case denied plaintiff's request for a preliminary injunction against the FTC's noncompete ban. In support of its decision, the judge opined that the FTC had authority to issue "procedural and substantive rules as is necessary to prevent unfair methods of competition" and therefore, the plaintiff would not likely succeed on the merits of its challenge. The court did not indicate when it would rule on the merits of the case.

In contrast, on July 3, 2024, the judge in the *Ryan* case granted a preliminary injunction, staying the ban from taking effect (however, solely with respect to the plaintiff, a Texas-based tax firm) until the case is resolved.²

¹ For details on the FTC ban on noncompete arrangements, see [Meridian's Client Alert dated April 25, 2024](#).

² For details on the court decision in the *Ryan* case, see [Meridian's Client Alert dated July 8, 2024](#).

Unlike the *ATS Tree Services* ruling, the Texas district 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 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.

The Pennsylvania and Texas district courts appear poised to deliver conflicting decisions on the FTC’s authority to ban noncompete arrangements, which would be subject to review by federal appeals courts in different circuits. If those appeals courts issued conflicting opinions, the conflict would likely be resolved by the Supreme Court.

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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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