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FEDERAL COURT STRIKES DOWN FTC'S NON-COMPETE RULE

On August 20, 2024, the United States District Court for the Northern District of Texas set aside the Federal Trade Commission's ("FTC") proposed ban on non-compete agreements, holding the FTC's non-compete rule "shall not be enforced or otherwise take effect on its effective date of September 4, 2024 or thereafter."

This decision comes as a continuation of the court's prior ruling on July 3, 2024, where the court had previously only enjoined the FTC from enforcing and implementing the rule against the specific parties involved in the case. Specifically, Judge Ada Brown ruled that the FTC lacked the statutory authority to issue such a broad rule, and that the rule was arbitrary and capricious.

The federal court's August 20th decision renders the injunction against the FTC's rule permanent and nationwide, applicable to all parties in all judicial districts across the country.

While the court's order provides employers with relief from the FTC's rule for the foreseeable future, it is not necessarily the final chapter in this story. The FTC's spokesperson, Victoria Graham, has said the FTC is "seriously considering a potential appeal" to the Fifth Circuit Court of Appeals. The FTC's spokesperson added that the "decision does not prevent the FTC from addressing noncompetes through case-by-case enforcement actions." Accordingly, the rule's future remains unclear.

This order now returns U.S. employers to the status quo, where state laws provide a "patchwork quilt" of restrictions applicable to restrictive covenants, including provisions addressing non-competition, non-solicitation of customers, non-diversion of employees, and nondisclosure of confidential information. Employers should take this opportunity to audit and review existing restrictive covenant agreements in place for employees. Such a review should consider whether the agreement complies with applicable laws of governing jurisdictions, keeping in mind both the employer's location and the employee's state of residence and work.

For more information about this ruling as well as considerations for employers moving forward, please reach out to [Tara Stingley](#), [Nathan Heimes](#), or another member of Cline Williams' Labor and Employment Law Section at www.clinewilliams.com.

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