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CLIENT ALERT: FEDERAL COURT IN TEXAS BLOCKS IMPLEMENTATION OF THE FTC'S RULE BANNING NON-COMPETES

August 21, 2024

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On August 20, a Texas federal court issued a permanent injunction that imposes a nationwide block on the Federal Trade Commission's Rule banning noncompete agreements in employment contracts. The decision comes after the court entered a preliminary ruling earlier this summer that paused implementation of the FTC Rule only for the parties involved in the case before it. The Texas court's final decision yesterday is broad and with far-reaching effects. Specifically, the Texas judge, reviewing the FTC Rule under the Administrative Procedures Act, concluded that the FTC does not have the authority to make substantive rules related to preventing unfair methods of competition, and that the ban on non-compete agreements is arbitrary and capricious because it is unreasonably overbroad without a reasonable explanation.

The FTC rule, which was approved in April, was set to go into effect on September 4, 2024, but following the Texas court's decision finding the Rule to be unlawful, the FTC is barred from implementing the Rule on its proposed effective date.

Yesterday's decision conflicts with an earlier decision at the end of July by a federal court in Pennsylvania rejecting the very same challenges to the Rule decided by the Texas judge, and finding that the FTC has legal authority to impose the ban. The Pennsylvania court's decision, however, was preliminary while the case progresses in that court.

Businesses around the country are again wondering what effect these rulings have on them. The FTC has indicated that it is considering an appeal of the Texas decision, though none has been filed yet. Appeals are especially likely if the Pennsylvania court issues a final decision in line with its preliminary ruling approving the Rule. An ultimate resolution may rest with the United States Supreme Court. In the meantime, based on the ruling from Texas, the Rule will not go into effect, and the FTC will not be able to take any enforcement action pursuant to it.

If you need further information, please refer to our prior publications, Client Alert: Texas Federal Court Grants Limited Injunction of FTC's Rule Banning Noncompete Clauses Attorneys and Breaking News: FTC Approves Nationwide Ban on Noncompete Clauses – What It Means for Your Business Attorneys, or contact Leonard K. Samuels, Ruth Vafek or any other attorney of Berger Singerman's Labor & Employment Practice.

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