LEGAL MINUTE

FTC Non-Compete Ban Blocked

A federal court has ruled that the Federal Trade Commission's (FTC) final rule banning non-compete agreements (the "Non-Compete Ban") is unlawful because the FTC did not have the authority to make the rule. The Non-Compete Ban was scheduled to take effect on September 4, 2024. Consequently, the Non-Compete Ban will not be implemented as planned, and employers are not obligated to comply with its provisions. Instead, restrictive covenants, including non-compete agreements, will continue to be regulated by applicable state laws.

The case that halted the Non-Compete Ban is *Ryan LLC v. Federal Trade Commission*. In this case, Ryan LLC, the U.S. Chamber of Commerce, and other trade organizations sought a nationwide stay of the Non-Compete Ban, arguing that (1) the FTC exceeded its statutory authority, (2) the ban represented an unconstitutional exercise of power, and (3) the FTC's actions were arbitrary and capricious. On August 20, 2024, the Court ruled on the merits, blocking the Non-Compete Ban. The Court found that the FTC overstepped its statutory authority and lacked the power to impose substantive rules through its approach. Specifically, the Court determined that, after reviewing the text, structure, and history of the Administrative Procedure Act (APA)—the federal statute governing agency rulemaking and allowing federal courts to invalidate such rulemaking—the FTC lacked the authority to establish substantive rules regarding the Non-Compete Ban in the manner it pursued.

This ruling does not conclude the debate over the enforceability of non-compete agreements. The FTC may appeal the decision , which could result in conflicting precedents. Additionally, the FTC might revise the Non-Compete Ban in light of the Court's findings in *Ryan*, and Congress could introduce new legislation on restrictive covenants.

For now, employers are not required to comply with the Non-Compete Ban. We advise employers to review their restrictive covenants, particularly non-compete clauses, to ensure they comply with Wisconsin laws and the laws of any other states in which they have employees.

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