Update on FTC's Ban on Non-Competes



June 18, 2024

A Texas business and the U.S. Chamber of Commerce filed suit against the Federal Trade Commission ("FTC") in Federal District Court of Texas for an emergency stay of the FTC's final Non-Compete Rule, imposing a comprehensive ban on new non-competes with all workers, including senior executives.

The FTC opposed the emergent application to block the ban, arguing the ban is lawful and that it has authority to issue the ban under the FTC Act to prevent "unfair methods of competition" in or affecting commerce, such as when employers use noncompetition agreements.

The FTC argued that all non-competes are: (1) a method of competition as opposed to a condition of the marketplace; (2) are facially unfair because they are restrictive and exclusionary; and (3) tend to negatively affect competition in labor, product, and service markets. Thus, the FTC claims the rule it adopted to ban non-competes entered into on or after the rule's effective date of September 4, 2023 is lawful and within its authority to ban non-competes.

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> "That mandate necessarily requires …tak[ing] account of the widespread adoption of practices across industry," argues the FTC, "not just the individual, isolated effects of a single contract." The FTC has determined that every non-compete is a method of unfair competition.

The Plaintiffs, a Texas business and the U.S. Chamber of Commerce, filed an action seeking emergent relief to stay or halt the ruling. The standard for emergent relief requires a showing of irreparable harm, which the FTC claims the plaintiff cannot meet, and a balance of the equities, which the FTC argues weighs in favor of the FTC. Plaintiffs, however, claim that there is a presumption that compliance with a regulation later held to be invalid results in irreparable harm to those subject to the regulation.

Once the plaintiff and the U.S. Chamber respond to the FTC's opposition, the court will render its ruling.

A second lawsuit, also filed in Texas Federal District Court, has been halted by the Court, to allow the first filed case to proceed under the First to File Rule. Business groups are closely watching the case and more litigation is anticipated.

Updates on the outcome of these lawsuits and implications on the FTC's ban and effect on non-compete agreements will continue.

For any questions, please feel free to contact:

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