

**Client Alert** | July 8, 2024

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## Update: Judge Issues Preliminary Injunction of FTC Non-Compete Ban Limited to Named Plaintiffs; Full Injunction Likely to Follow

On July 3, 2024, the U.S. District Court for the Northern District of Texas issued a limited preliminary injunction staying enforcement of the Federal Trade Commission's (the "FTC") [Final Rule](#) banning non-compete agreements (the "Final Rule") solely with respect to the named plaintiffs in Ryan LLC v. Federal Trade Commission ([see our prior Client Alert on the Final Rule here](#)). This means that the FTC may not enforce the Final Rule against Ryan LLC, the U.S. Chamber of Commerce, the Longview Chamber of Commerce, Business Roundtable and the Texas Association of Business.

However, in her ruling, Judge Ada Brown signaled that the plaintiffs are likely to succeed on the merits and that a full nationwide injunction is likely to follow. In the decision, Judge Brown noted that there is a substantial likelihood that (1) the FTC overstepped its authority, noting that while the FTC has the authority to promulgate certain "housekeeping" rules regarding unfair or deceptive practices, the Federal Trade Commission Act does not expressly grant the FTC authority to promulgate substantive rules regarding unfair methods of competition, and (2) the Final Rule is "arbitrary and capricious" because it "imposes a one-size-fits-all approach" which fails to differentiate the effects of non-competes on different classes of workers, and because the FTC failed to consider any alternatives to a blanket ban or any "pro-competitive justifications" for allowing non-competes. Judge Brown indicated that she intends to rule on the merits by August 30, 2024.

Given the ruling, other challenges pending in Texas and Pennsylvania, and the Supreme Court's recent ruling in *Loper Bright Enterprises v. Raimondo* overturning the principle of Chevron deference (the precedent under which courts grant deference to a federal agency's interpretation of its own power), it appears unlikely that the Final Rule will go into effect on September 4th of this year, if at all.

For the time being, non-competes remain effective and enforceable to the same extent as prior to the Final Rule. We will continue to monitor these challenges and will provide updates on any further development.

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## Key Contacts

If you have any questions regarding the foregoing, or non-competition or restrictive covenants agreements generally, or would like assistance in evaluating your existing restrictive covenant arrangements, please contact your Morrison Cohen relationship attorney or one of our following Compensation, Benefits and Labor & Employment lawyers:

**Jeff Laska**

*Partner & Chair  
Executive Compensation & Employee Benefits  
D 212.735.8666  
[jlaska@morrisoncohen.com](mailto:jlaska@morrisoncohen.com)*

**Keith Markel**

*Partner & Co-Chair  
Labor & Employment  
D 212.735.8736  
[kmarkel@morrisoncohen.com](mailto:kmarkel@morrisoncohen.com)*

**John Fulfree**

*Partner  
Labor & Employment  
D 212.735.8850  
[jfulfree@morrisoncohen.com](mailto:jfulfree@morrisoncohen.com)*

**Tali Newman**

*Partner  
Executive Compensation & Employee Benefits  
D 212.735.8723  
[tnewman@morrisoncohen.com](mailto:tnewman@morrisoncohen.com)*

**Alina Grinman**

*Partner & Vice Chair  
Executive Compensation & Employee Benefits  
D 212.735.8818  
[agrinman@morrisoncohen.com](mailto:agrinman@morrisoncohen.com)*

**Jeffrey Englander**

*Partner & Co-Chair  
Labor & Employment  
D 212.735.8720  
[jenglander@morrisoncohen.com](mailto:jenglander@morrisoncohen.com)*

**Brian Snarr**

*Partner  
Executive Compensation & Employee Benefits  
D 212.735.8831  
[bsnarr@morrisoncohen.com](mailto:bsnarr@morrisoncohen.com)*

**Michael McGovern**

*Associate  
Executive Compensation & Employee Benefits  
D 212.735.8878  
[mmcgovern@morrisoncohen.com](mailto:mmcgovern@morrisoncohen.com)*

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