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Locke Lord QuickStudy: FTC's Rule Banning Non-Competes Set Aside: How Did We Get Here and What's Next?

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On August 20, 2024, U.S. District Judge Ada Brown of the Northern District of Texas issued her much-anticipated final decision in *Ryan LLC and Chamber of Commerce et al v. Federal Trade Commission, ?*and set aside the FTC's rule banning non-compete agreements (the "Rule"). So, how did we get here, what happened, and what can we expect next?

- How did we get here? – On April 23, 2024, the Federal Trade Commission announced the Rule, which, once effective on September 4, 2024, would operate to ban nearly all non-compete agreements between employers and workers. The primary exceptions to the Rule were for non-compete agreements with "Senior Executives" as well as non-competes executed as part of the bona fide sale of a business. A more detailed summary of the Rule can be found here.
- What happened in the *Ryan LLC* case? – Multiple lawsuits challenging the Rule were filed almost immediately after the FTC voted to approve the Rule. The first-filed case was brought by Ryan, LLC, a Dallas-based tax and software firm, in the Northern District of Texas. On July 3, 2024, Judge Brown granted a preliminary injunction against enforcement of the Rule, but only as to the named plaintiffs in that lawsuit – not against other employers or interested parties nationwide. Ryan, LLC and the FTC then filed cross-motions for summary judgment, asking for a final ruling from the court as to whether the FTC had the authority to issue and enforce the Rule. On August 20, 2024, the district court ruled in favor of Ryan, LLC, "because the FTC exceeded its statutory authority in implementing the Rule, and the Rule is arbitrary and capricious." As a result, the court held that "[t]he Rule shall not be enforced or otherwise take effect on its effective date of September 4, 2024, or thereafter."
- What happens next? – In the wake of Judge Brown's decision, a spokesperson for the FTC stated that the FTC is "seriously considering a potential appeal" and that Judge Brown's decision "does not ?prevent the FTC from addressing non-competes through case-by-base enforcement actions." ?Thus, it seems likely the FTC will appeal the decision to the Fifth Circuit and possibly the Supreme ?Court of the United States. Though those efforts seem unlikely to yield a different outcome ?in light of the recent decisions from those courts, it is clear the FTC remains focused on ?curbing what it believes to be anti-competitive conduct through the use of restrictive ?covenants. In the meantime, employers should expect state and local legislatures around the country to continue efforts to pass laws limiting the scope and applicability of non-compete and other restrictive covenant agreements. Whether it is prohibiting non-compete agreements with "low wage earners," capping the maximum duration of a non-compete agreement, requiring advance notice or other considerations, there has been a trend in recent years in curtailing the enforcement of non-compete agreements. Being aware of changes under both state and federal laws gives employers the best chance of protecting their intellectual property, their workforce, and their valuable customer relationships. Failure to do so, however, risks providing unintentionally

unenforceable agreements to their workforce, with the additional possibility of financial blowback at the courthouse.

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