

Federal Court in Pennsylvania Denies Injunction Preventing FTC From Enforcing New Non-Compete Rule

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A federal court in Pennsylvania rejected an attempt to enjoin the FTC's newly adopted rule banning virtually all non-compete clauses with workers. (Our summary of the FTC's non-compete rule can be found [here](#).) The court in *ATS Tree Services, LLC v. Federal Trade Commission* held that the plaintiff failed to demonstrate it would be irreparably harmed if the rule goes into effect. While the court could have denied the injunction on that basis alone, it nonetheless went on to conclude that the plaintiff had not demonstrated that it was likely to succeed on the merits of its claims that the FTC lacked authority to issue the rule or that Congress' delegation of that authority to the FTC was unconstitutional.

The *ATS* court's conclusion that the plaintiff had not demonstrated that it was likely to succeed on its challenge to the FTC rule is directly at odds with the recent holding by a federal court in Texas in *Ryan v. FTC*. The *Ryan* court granted the plaintiffs' request for a preliminary injunction, holding that the plaintiffs in that case had demonstrated that they were likely to succeed on the merits of their claims that the FTC lacked authority to issue the non-compete rule. (Our summary of the *Ryan* decision can be found [here](#).) The *ATS* court did not specifically address the *Ryan* decision, but it rejected many of the same arguments that the *Ryan* court endorsed.

Both of these decisions address motions for preliminary injunctions, so they are not final and binding rulings. The *Ryan* court intends to issue a final decision on the merits on or before August 30, 2024 (just a few days before the September 4, 2024 effective date of the non-compete rule). A decision on the merits finding that the FTC did not have authority to issue the rule likely would prevent the FTC from implementing the rule while any appeals are decided. The *ATS* court also could set an expedited schedule to rule on the merits. The ultimate decisions in both cases are likely to be appealed, and any circuit split increases the likelihood that the Supreme Court would ultimately resolve the dispute.

We will continue to monitor developments in this litigation and are available to address specific issues.

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