

PRACTICAL NEWS  
LEGAL ALERTS  
August 2024

## ON AGAIN, OFF AGAIN...OFF AGAIN NOW: The FTC's Non-Compete Rule

On August 20, 2024, the United States District Court for the Northern District of Texas set aside and deemed unlawful and unenforceable the Non-Compete Rule ("Rule") promulgated by the Federal Trade Commission ("FTC"). In *Ryan LLC v. Federal Trade Commission* ("*Ryan*"), 2024 WL 3879954 (N.D. Texas August 20, 2024), the Court determined that the Rule was violative of the FTC Act, the Administrative Procedure Act, and the Declaratory Judgment Act. The Court ruled that the FTC "exceeded its statutory authority in implementing the Rule" and further declared the Rule to be "arbitrary and capricious" for being unreasonably overbroad and not reflective of reasonable alternatives. The Court held that the Rule "shall not be enforced or otherwise take effect on September 4, 2024, or thereafter."

In citing the recent US Supreme Court decision in *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244 (2024), the Court concluded that the FTC did not have the authority, statutorily or otherwise, to create "substantive rules regulating unfair methods of competition" prohibited by the FTC Act. The Court noted: "The role of an administrative agency is to do as told by Congress, not to do what the agency thinks it should do." The Court explained that Sections 5 and 6 of the FTC Act provided the FTC with authority to promulgate procedural, housekeeping, and adjudicatory rules to combat unfair methods of competition but not the authority to promulgate substantive rules. In so holding, the Court set aside the Rule which would have significantly prohibited employers from utilizing or enforcing non-compete agreements to prohibit an employee from competing against the employer. The Court held that its decision was not "party-specific," has a "nationwide effect," and "affects persons in all judicial districts equally" throughout the United States.

**Key Takeaways:** Employers in New York and elsewhere are no longer required to comply with or implement the FTC's Non-Compete Rule or any of the requirements referenced therein. Such regulatory compliance will only be mandated if the FTC were to appeal the *Ryan* decision and the decision were to be reversed on appeal. Phillips Nizer will keep you updated with any and all developments. Employers still must be cognizant of and remain compliant with New York State laws and other state-specific laws governing the viability, enforceability, and reasonableness of non-compete agreements.

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