

## ISSUE ALERTS

### EMPLOYERS SHOULD PREPARE FOR THE FTC'S NON-COMPETE BAN TO GO INTO EFFECT SEPT. 4; FEDERAL DISTRICT COURT REFUSES TO BLOCK THE BAN

July 31, 2024

By: Clayton J. Kaiser

On July 23, 2024, in *ATS Tree Services, LLC v. Federal Trade Commission et al.*, the United States District Court for the Eastern District of Pennsylvania denied an employer's request to temporarily enjoin the Federal Trade Commission's ("FTC") rule banning the use of most non-compete agreements in employment contracts ("the Rule"). We previously published two Issue Alerts regarding the Rule: first, on April 25, 2024, following the FTC's promulgation of the Rule, and second, on July 8, 2024, following a Texas federal court's issuance of a preliminary injunction temporarily blocking enforcement of the Rule as to the parties in that case ("the Texas Case").

As it now stands, two federal district courts have addressed the Rule and have reached different conclusions regarding its enforceability. Furthermore, no nationwide injunction blocking enforcement of the Rule has been issued. With that said, the court in the Texas case has indicated that it will issue its final merits determinations by Aug. 30, 2024. Thus, it is possible that the Rule may still be struck down and its enforcement enjoined nationwide by the day that the Rule is set to become effective, Sept. 4, 2024. However, in light of the Texas court's earlier decision, employers should not count on that outcome at this point. Accordingly, employers should continue to prepare for the Rule going into effect on Sept. 4, and determine whether they are comfortable with their existing restrictive covenant agreements in light of the Rule's impending implementation.

#### FOR MORE INFORMATION

If you have questions or want more information regarding the Rule or strategies regarding it, contact your legal counsel. If you do not have regular counsel for such matters, Foulston Siefkin LLP would welcome the opportunity to work with you to meet your specific needs. For more information, contact Scott C. Nehrbass at 913.253.2144 or [snehrbass@foulston.com](mailto:snehrbass@foulston.com) or Clayton J. Kaiser at 316.291.9539 or [ckaiser@foulston.com](mailto:ckaiser@foulston.com). For more information on the firm, please visit our website at [www.foulston.com](http://www.foulston.com).

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