

## **Collision Course: Texas and Pennsylvania Courts Trending Toward Potential Circuit Split on the Viability of the FTC Rule Banning Non-Competes**

July 24, 2024

Source: *Saiber Employment Law Alert*

On April 23, the FTC issued a Final Rule banning non-compete agreements, subject to a few exceptions. The Final Rule is scheduled to go into effect on September 4. We have been watching with interest as two lawsuits challenging the FTC's authority to issue such a broad, significant Rule make their way through the courts. *Ryan LLC v. Federal Trade Commission* was filed in the US District Court for the Northern District of Texas and *ATS Tree Services, LLC v. Federal Trade Commission* was filed in the US District Court for the Eastern District of Pennsylvania. Both lawsuits seek to invalidate the Rule and seek injunctive relief to stay the effective date of the Rule. So far, the two Courts have reached opposite conclusions, and while both cases remain active, the effective date has not been stayed. Here's a short summary if you're just tuning in.

On July 3, the Northern District of Texas issued an opinion that *Ryan LLC* is likely to succeed on the argument that the Rule exceeded the FTC's authority, and issued a preliminary injunction staying the Rule as to the parties in that litigation. Notably, the injunction only applied to the parties to the litigation and did not result in a nationwide stay of the September 4 effective date.

On July 23, the Eastern District of Pennsylvania issued an opinion denying the request for a preliminary injunction to stay the effective date of the Rule, in part, because *ATS Tree Services* is not likely to succeed on the merits of its challenge to the FTC's authority.

At the preliminary injunction stage of these cases, the two courts have reached opposite conclusions as to the FTC's authority and the likelihood of the plaintiffs successfully invalidating the Rule.

The Texas Court is scheduled to issue a final judgment on the merits on or before August 30—just days before the Rule is scheduled to take effect on September 4.

This could lead to a very interesting Labor Day Weekend.