

Court Enjoins FTC Noncompete Ban: Appeal Likely

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A federal judge in Texas has enjoined the Federal Trade Commission's ban on noncompete agreements, leaving the FTC's attempt to quash such agreements waiving in the breeze, at least for the time being. Earlier this spring, the FTC issued a broad rule banning almost all noncompetes in for-profit businesses, subject to limited exceptions, including an exception for senior executives (defined as workers earning more than \$151,164 annually who are in policymaking roles). More detail about the rule is available in our client alert, "[Court Direction on FTC's Noncompete Ban Expected This Summer.](#)" The FTC's rule was promptly challenged by numerous businesses seeking to enjoin it. Courts issued conflicting decisions earlier this summer. In early July, the U.S. District Court for the Northern District of Texas enjoined the FTC's rule and stayed its effective date but applied its ruling only to the parties in the case and declined to issue a nationwide injunction. In late July, however, the U.S. District Court for the Eastern District of Pennsylvania declined to enjoin or stay the FTC's rule. In August, the Northern District of Texas enjoined the FTC's rule and stayed its effect nationwide, holding that the FTC lacked statutory authority to promulgate the rule and that it violated the Administrative Procedure Act in doing so. The U.S. Supreme Court's recent decision overruling the long-standing *Chevron* deference doctrine is a wind at the back of those challenging the FTC rule, and for now businesses can breathe a sigh of relief. But employers that may be affected by the FTC noncompete rule would be well advised to be prepared to comply with the FTC rule in case compliance is needed in short order following an appeal.

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