



# Pennsylvania Federal Court is Latest Court Refusing to Halt FTC's Non-Compete Ban

Client Advisories

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In late July 2024, a Pennsylvania federal judge declined an employer's request to enjoin the Federal Trade Commission's non-compete Rule, which imposes a comprehensive ban on non-competes with most employees. This ruling is the latest court that declined to stop the FTC near-total ban on non-compete agreements, which is still set to take effect on September 4, 2024. Despite this, other federal courts will have more opportunities before September 4<sup>th</sup> to stop the FTC's ban, so stay tuned.

In this case, ATS Tree Services LLC v. Federal Trace, a tree-care company with twelve employees, who required its employees to sign non-compete agreements, sought to stop the FTC's non-compete prohibition Rule. The tree company's agreements prohibited the employees from working for direct competitors following separation in the geographic area the employee worked for one year.

The court denied the injunction for two reasons: a lack of "irreparable harm" and an unlikelihood of winning the case on the merits. As to irreparable harm, the Court ruled that costs of compliance with the Rule – such as the expenses of sending out notices, attorney's fees, and having to scale back specialized training – were nothing more than minimal costs, and were not sufficient to justify an injunction. The Court also felt that the risk of losing employees was merely speculative and a "risk" of irreparable harm is not enough.

Perhaps more significant is the second part of the Court's analysis, which concluded that the tree company was not likely to be successful on the merits of its claim that the FTC was acting outside of its authority. The Court found it "clear that the FTC is empowered to make both procedural and substantive rules as is necessary to prevent unfair methods of competition." Further, the Court found that it has been well-demonstrated that Congress intended "to retain the existing authority empowering the FTC to prevent unfair methods of competition, and the discretion to determine the appropriate mechanisms to accomplish that directive." In reaching this finding, the Court relied upon the FTC's historical substantive rulemaking and Congress's inaction

of limiting the FTC's substantive authority in the past, despite the opportunities to do so.

Finally, the Court ruled that overlapping jurisdiction between state and federal governments in this area also does not preclude the FTC from issuing rules to prevent unfair methods of competition. This is so, according to the Court, because parallel state laws are not entirely preempted, and conflicting state laws are rightfully preempted as the FTC is empowered to prevent "unfair methods of competition."

As of now, the Rule will take effect on September 04, 2024. Yet, as we have explained, several other legal challenges are pending, and one of more of them is expected to be decided before September 4<sup>th</sup>. So, an injunction or hold on the FTC's Rule may still happen before the deadline.

Our firm has issued a number of prior alerts on FTC's Non-Compete Rule. Please see:

- [Ban on the Run: Federal Trade Commission's Proposed Non-Compete Ban Headed to Vote](#)
- [Federal Trade Commission Makes Good on Promise to Ban Non-Competes](#)
- [FTC Ban Poised for Fourth of July Fireworks](#)
- [Federal Court in Texas Puts Hold on FTC's Ban - but Only for the Plaintiffs in That Case](#)

If you have any questions about the FTC Rule and the latest developments, please contact [Peter Frattarelli](#) at 856.354.3012 or [pfrattarelli@archerlaw.com](mailto:pfrattarelli@archerlaw.com) or [Thomas Muccifori](#) at 856.354.3056 or [tmuccifori@archerlaw.com](mailto:tmuccifori@archerlaw.com).

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