

Insights, News & Events

FLORIDA COURT IS NEXT TO RULE AGAINST FTC'S NON-COMPETE BAN, BUT EMPLOYERS NOT YET IN THE CLEAR

Insights
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A Florida federal court became the second court in the nation yesterday to rule that the Federal Trade Commission's proposed ban on most non-compete agreements cannot be enforced. Chief Judge Timothy Corrigan, from the Middle District of Florida, issued an order late yesterday siding with the employer and holding that the FTC didn't have the authority to issue such a broad non-compete ban. But the court's order only grants relief to the employer that brought suit and no one else. So, nothing has changed yet for employers across the country preparing for the rule's September 4 effective date.

[EDITOR'S NOTE: A Texas federal court struck down the FTC's proposed ban on non-competition agreements on a nationwide basis on August 20, meaning employers across the country can continue to maintain non-competes as their state laws allow. Employers will not have to comply with the rule by September 4 as originally scheduled. [Read more about the decision and practical pointers on next steps by clicking here.](#)]

What Happened?

Properties of the Villages, Inc. sued the FTC in a Florida federal court seeking an order blocking the non-compete ban from applying to that particular company. If you want a reminder about the non-compete ban, here are two resources to learn more:

- [Feds Ban Non-Compete Agreements: A 5-Step Plan for Employers](#) (April 24)

Related People



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■ [Frequently Asked Questions About the FTC's Rule Banning Non-Compete Agreements](#) (May 16)

The employer in the Florida lawsuit won in Wednesday's ruling, but, unlike the U.S. Chamber in a recent Texas case, it did not seek a nationwide injunction that would have stopped the rule from applying to all employers. So, Wednesday's ruling was a complete victory for this particular employer, but other companies can't rely on this order to avoid complying with the FTC's rule.

This is now the second court to stop the rule from taking effect, but only for the parties in the suit. A Texas court issued a similar ruling on July 3 in the case brought by the U.S. Chamber of Commerce, [which you can read about here](#). But the difference is that the Texas court specifically rejected a request to extend relief to all employers nationwide, whereas it appears that the Villages did not raise this issue in its request for relief.

What's Next?

All eyes now turn back to **Texas**, where the judge in the U.S. Chamber case indicated she would issue a final merits disposition by August 30. Although she declined to extend her preliminary ruling to employers across the country, she issued a forceful rebuke against the FTC on the merits in the preliminary order. The parties have once again asked for a permanent nationwide injunction in the event the judge sticks to her conclusion that the non-compete ban is unlawful.

There is a third case pending in **Pennsylvania** – but employers shouldn't hang their hopes there. Late last month, the judge in that case ruled in the FTC's favor, concluding that the rule is probably lawful. ([You can read about that decision here](#).)

We will be tracking the litigation closely over the final weeks before the September 4 effective date, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to receive the most up-to-date information directly to your inbox.

What Should You Do? Your 5-Step Plan

We're less than three weeks away from the effective date. Even though the rule could still be enjoined nationwide on

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August 30, you may want to start investing some time and resources to prepare for compliance. [You can read our full five-step recommended plan by clicking here](#). A quick overview:

1. Develop a Personalized Strategy Plan – Work with your legal counsel to come up with a solution that works for your business.

2. Use the Next Three Weeks to Take Stock – You might want to take some preliminary steps to hedge your bets.

3. Begin Plotting Alternatives – There are other ways to protect your interests.

4. Strengthen Other Restrictive Covenants – Review your non-solicitation, non-recruitment, non-servicing, and non-disclosure clauses for compliance with state law.

5. Get Your Trade Secrets House in Order – Identify your trade secrets and ensure that you have proper policies and procedures in place to protect them.

Conclusion

We will be monitoring the situation and providing updates as the court battles continue and the September 4 effective date approaches. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to gather the most up-to-date information directly to your inbox. If you have questions, please contact the authors of this Insight, your Fisher Phillips attorney, or any attorney in our [Employee Defection and Trade Secrets Practice Group](#).