

FTC Noncompete Ban Invalidated Until Further Notice

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In a win for countless businesses throughout the United States, a federal court in Texas has just issued an order setting aside the Federal Trade Commission's newly promulgated nationwide ban on the use of noncompete agreements.

Businesses of all shapes and sizes and across nearly all industries in the United States use noncompete and nonsolicitation agreements to serve legitimate business needs. Particularly, the needs to protect their confidential information from being used against them by competitors and to protect long-term investments in client relationships, strategic business plans and strategies, and research and development. As we have repeated since the FTC first hinted at its would-be rule, banning noncompete agreements would be bad for business.

The current FTC, which has become increasingly more aggressive towards businesses and specific industries in recent years, announced its final Noncompete Rule April 23, with the rule set to go into effect Sept. 4. Despite widespread doubts regarding the FTC's authority to make such a rule (doubts which we shared), and despite thousands of commentators speaking out against the proposed rule, the FTC moved forward on a 3-2 vote to ban nearly all noncompete agreements across the country. The final rule and discussion ended up being more than 500 pages long, and it was extremely broad, failing to account for location, business size, competition, specialization or any of the factors upon which individual businesses make their operating decisions on a daily basis. Rather than leave the decision regarding noncompetes to Congress or the individual states, the FTC — a body made up of unelected officials — decided that it knew what was best for nearly every business and worker in the country.

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