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## *Pennsylvania Federal Judge Denies Motion Challenging FTC Non-Compete Ban*

By [Jennifer Baldocchi](#), [Carson Sullivan](#), [Jessica Mendelson](#), [Chelsea Desruisseaux](#) & [Ellen Atkinson](#)

On July 23, 2024, the Pennsylvania Eastern District Court upheld the Federal Trade Commission's (FTC) [Non-Compete Clause Rule](#) ("Rule"), issued in April 2024 to prohibit most employee non-compete agreements.

Earlier this year, ATS Tree Services ("ATS"), a small Pennsylvania business specializing in tree care, filed an action against the FTC challenging its authority to issue the Rule. ATS advanced several arguments, including claims that the Rule is invalid and the FTC violated its jurisdictional and statutory authority. On July 10, 2024, Judge Kelley Brisbon Hodge heard oral arguments from both parties on whether the court should issue a preliminary injunction and stay preventing the enforcement of the Rule.

Following oral argument, the court denied ATS's motion for preliminary injunction. It concluded that ATS failed to establish how it would suffer irreparable harm in the absence of injunctive relief, finding ATS's argument that it would be harmed by nonrecoverable compliance costs and a loss of contractual benefits by complying with the Rule unpersuasive. In the court's memorandum opinion, Judge Hodge explained that "[the Court] follows the Third Circuit's precedent that monetary loss and business expenses alone are insufficient bases for injunctive relief" and highlighted the fact that the Rule offered contractual alternatives to non-compete agreements that should mitigate ATS's concerns, such as nondisclosure agreements. The court additionally addressed ATS's likelihood of success on the merits and found ATS's arguments equally unavailing:

[T]he Court finds Plaintiff has failed to establish a reasonable likelihood that it will succeed on the merits of its claims that the FTC lacks substantive rulemaking authority under its enabling statute, that the FTC exceeded its authority, and that Congress unconstitutionally delegated legislative power to the FTC. Having failed to establish both of the threshold factors, likelihood of success on the merits and irreparable harm, the Court need not and therefore declines to analyze the final two prongs of the preliminary injunction analysis, the balance of the equities and the public interest.

The decision reaches a different outcome regarding the FTC's authority to establish the Rule than that reached by Judge Ada Brown in her N.D. Texas [ruling granting a preliminary injunction in \*Ryan, LLC. v. FTC\*](#). Judge Brown's final ruling on the merits in *Ryan* is anticipated on or before August 30, 2024.

For questions regarding this decision, consult the employment mobility and trade secrets expert attorneys at Paul Hastings.



*If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:*

**Los Angeles**

Jennifer Baldocchi  
1.213.683.6133  
[jenniferbaldocchi@paulhastings.com](mailto:jenniferbaldocchi@paulhastings.com)

**New York**

Kenneth Gage  
1.212.318.6046  
[kennethgage@paulhastings.com](mailto:kennethgage@paulhastings.com)

Marc Bernstein  
1.212.318.6907  
[marcbernstein@paulhastings.com](mailto:marcbernstein@paulhastings.com)

Patrick Shea  
1.212.318.6405  
[patrickshea@paulhastings.com](mailto:patrickshea@paulhastings.com)

**San Francisco**

Jessica Mendelson  
1.415.856.7006  
[jessicamendelson@paulhastings.com](mailto:jessicamendelson@paulhastings.com)

**Washington D.C.**

Carson Sullivan  
1.202.551.1809  
[carsonsullivan@paulhastings.com](mailto:carsonsullivan@paulhastings.com)

Michael Murray  
1.202.551.1730  
[michaelmurray@paulhastings.com](mailto:michaelmurray@paulhastings.com)

Michael Wise  
1.202.551.1777  
[michaelwise@paulhastings.com](mailto:michaelwise@paulhastings.com)

Ryan Phair  
1.202.551.1751  
[ryanphair@paulhastings.com](mailto:ryanphair@paulhastings.com)

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