

EMPLOYER LAW BLOG

Employer Alert: Non-Compete Fight Not Over

AUTHOR: JAMES KEANEY

The Federal Trade Commission (FTC) has now appealed two separate decisions by federal court judges that concluded the new FTC rule banning non-competes is invalid.

Previously, as we covered in a prior blog post, a federal judge in Texas (which sits under the Fifth Circuit Court of Appeals) set aside the rule for several reasons. Around the same time, a federal judge in Florida (which sits under the Eleventh Circuit Court of Appeals) granted a preliminary injunction to prevent the rule from being enforced.

Prior to those two decisions, a federal judge in Pennsylvania had ruled *in favor of the FTC* in a challenge to the rule. That case was subsequently withdrawn and no appeal is pending in that matter.

Now, however, the FTC is appealing the adverse decisions against it in both the Fifth Circuit and Eleventh Circuit. Both Circuits have a conservative reputation. No matter how the challenges shake out in these two Circuits, most believe the fight will reach the Supreme Court eventually for final resolution.

Stay tuned for further developments. In the meantime, do not hesitate to reach out to a member of the Labor & Employment Team here at Sandberg Phoenix to review and develop your restrictive covenant strategy to protect your business interests.