GAWDA GASES AND WELDING DISTRIBUTORS ASSOCIATION	**Member Alert**
22 August 2024	**Federal Court Enjoins FTC Ban on Non-Compete Agreements**

A federal court judge in Texas has ruled that the Federal Trade Commission does not have authority from Congress to impose a ban on non-compete agreements and issued an injunction against enforcement of the rule. As a result, the FTC's non-compete ban will not go into effect on September 4, 2024 as scheduled.

Although the Federal Trade Commission Act gives the FTC authority to bar unfair methods of competition, the court held that this means that the Commission may only address these issues retroactively on a case-by-case basis and may not proscribe unfair methods of competition prospectively through a substantive rule.

The court also ruled that the non-compete ban was arbitrary and capricious because the rule was unreasonably broad and the Commission did not provide a reasonable explanation for its conclusions. Further, the court said the FTC's sweeping prohibition of non-compete agreements, instead of targeting specific, harmful practices without addressing possible alternatives, was also arbitrary and capricious.

This decision will likely be appealed to the U.S. Court of Appeals for the Fifth Circuit and might ultimately reach the U.S. Supreme Court. In 1973, a different federal appeals court ruled that the FTC did have authority from Congress to issue these types of substantive rules, so there is a split of opinion in the courts on this issue. But for now, the FTC ban on non-compete agreements will not go into effect.

Earlier this year in a 3-2 vote, the FTC adopted its final rule to ban new non-compete agreements for all workers; the rule was scheduled to go into effect as of September 4. The rule would have also banned enforcement of existing non-compete agreements in effect on the effective date of the rule for all workers except senior executives, defined as a worker who makes at least $151,164 per year and is in a policy making position.

The rule did not impose an outright ban on:

- non-disclosure agreements to protect a company's proprietary information and trade secrets;
- non-recruitment provisions that prohibit a former worker from recruiting a company's current employees;
- non-solicitation requirements barring a former worker from soliciting a company's customers; or
- requirements to repay training costs if the worker did not complete an agreed period of work for the company.

These types of employee restrictions are still legal.

The FTC estimated that the rule would have applied to over 101 million workers in the United States and would have increased the compensation for affected workers by over $53 billion per year, or $524 per worker annually.

In the final rule, the FTC noted GAWDA's survey responses indicating that 80% of its member companies used non-compete agreements with at least some of their workers.

This court decision does not affect any state law restrictions on non-compete agreements. California, North Dakota, Oklahoma and Minnesota already ban non-competes, over 40 other states limit the enforceability of non-competes in terms of timing, geographical application, or scope.

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