
New Non-Compete Law in Illinois *Causing a Stir among Employers*

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The most litigated issue in employment contracts is the legality of so-called "restrictive covenant" provisions, such as a non-compete clause which bars an ex-employee from going to work for a competitor. Non-compete agreements are designed to protect the legitimate business interests of employers such as customer relationships, confidential information, trade secrets, and ideas. The aim of a non-compete agreement is to protect information that could help an employee unfairly compete against the employer after terminating employment.

In a June 24, 2013, ruling, 7th Circuit Court of Appeals in the Northern District of Illinois decided that newly hired at-will employees who sign non-compete agreements must be employed for a minimum of 2 years for a non-compete to be enforceable unless the employer gives the new employee some additional form of compensation (i.e. a bonus). Essentially, this means that until a new employee reaches a 2-year anniversary on the job, the employer cannot block the employee from going to work for another, competing company, even if the employee signed a non-compete agreement at the time of hire.

This decision eliminates the distinction between newly hired and existing employees when it comes to non-compete and non-solicitation agreements in Illinois. Traditionally, in Illinois, existing employees had to be employed a minimum of 2 years for a post-employment non-compete agreement to be enforceable. Otherwise, the employer had to give the existing employee some type of additional compensation (i.e. a bonus or promotion) to make the non-compete stick.

Now, according to the Court's recent decision in *Fifield v. Premier Dealer Services, Inc.*, the 2-year employment requirement applies to newly hired employees as well. In *Fifield*, the employee worked for a subsidiary of a company that was acquired by another company and the employee was terminated as a result of the sale. But then the employee was offered a job with the new company if he signed a non-compete agreement that he would not to work for a competitor for 2 years after leaving the company. Within a few months, the employee left the company for a new job at a rival company and his former employer argued that he was bound by the non-compete.

The Court held that the non-compete agreement could not be enforced against Fifield because he had not been given a bonus or some other type of additional compensation when he signed the non-compete. Fifield was only employed for 3 months before leaving to work at a rival company and without additional compensation from his former employer, the 3-month period of time was far too short of the 2 years required for the non-compete to be valid.

This new decision is causing quite a stir among employers in Illinois as they grapple with the notion that now, newly hired at-will employees must be employed for two years or provided with additional compensation at the time of signing a non-compete/non-solicitation agreement in order for it to be enforceable.

In light of this decision, now is the time for employers to reassess their non-compete and non-solicitation agreements and pay existing and newly hired at-will employees some kind of bonus or additional compensation to prevent new employees from leaving to work for a rival.

Given the complexities associated with the restrictive covenant laws in the State of Illinois, anyone considering requiring new employees to sign non-competition and non-solicitation agreements may wish to consult with their local employment attorney.

Read the full 7th Circuit opinion here:

<http://www.illinoiscourts.gov/Opinions/AppellateCourt/2013/1stDistrict/1120327.pdf>

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