

State Supreme Court clarifies noncompete agreement law

Chicago Tribune - Chicago, Ill.

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Date: Dec 23, 2011

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Section: Business

Text Word Count: 612

Document Text

In an era when workers change jobs frequently either voluntarily or involuntarily, clearly defining the rules of a competitive labor market is paramount.

But in Illinois, there was confusion. The law concerning restrictions that companies routinely place on managers and skilled workers to stop them from working for a competitor was in a state of flux.

The legal uncertainty was bad for both employers and workers. Companies are more desperate to protect their business from rivals when the economy is not growing. But in times of high unemployment, management also has the upper hand. Employees are often in no position to negotiate terms of a covenant not to compete, also known as a "noncompete," which is a condition of employment or a severance package.

Given this backdrop, businesses, workers and employment lawyers eagerly looked to the Illinois Supreme Court to provide clarity. Earlier this month, the court addressed the issue, and restored some balance between an employer's interest in protecting confidential information or customer relationships and the freedom to earn a living.

Of course, some would argue that any restraint on job mobility should be outlawed. But that's a public policy debate for another day.

The immediate issue before the state Supreme Court was whether employers seeking to enforce a noncompete must demonstrate a "legitimate business interest" beyond simply not wanting competition. The case before the court was a very typical noncompete case involving two salesmen for Reliable Fire Equipment Co., an Alsip-based company that installs fire alarm systems in commercial buildings.

In a unanimous opinion published Dec. 1, the court ruled that there has to be a protectable interest at stake to prevent someone from pursuing a job. In doing so, the court said it "emphatically" disagrees with a state appellate panel's interpretation of the law that had created the confusion in the first place.

In late 2009, the 4th District Court of Appeals in central Illinois threw out decades of precedent by rejecting the legitimate-business-interest test. The court held that employers only had to show that the restrictive covenant was reasonable in its time and geographic restrictions.

The decision was bad news for workers because it lowered the threshold of proof needed to demonstrate that a noncompete was legal, said Ruth Major, a Chicago labor attorney who represents employees.

Since then judges have struggled to reconcile the appellate court decision with long-established tests of enforceability.

In the Reliable lawsuit, the trial court ruled that the noncompete agreement prohibiting the salesmen from competing in Illinois, Indiana and Wisconsin for one year after their termination was unenforceable. It held that Reliable had failed to identify a legitimate business interest.

The 2nd District appellate court, which covers northern Illinois except for Cook County, upheld the trial court's decision and said that the legitimate-business-interest test was valid. Reliable appealed.

The Illinois Supreme Court reversed the orders of the appellate and trial courts and remanded the case for further proceedings. Remarkably, lawyers representing both management and labor, gave positive reviews of the decision.

Major called the ruling "sensible."

Anthony Valiulis, who represents management as an employment lawyer at Much Shelist, said the court also broadened the enforceability of restrictive covenants.

The court's ruling, written by Justice Charles Freeman, said that a legitimate business interest extends beyond customer relationships and confidential information. In determining whether a protected interest exists, the court said judges should consider "the totality of the facts and circumstances of the individual case."

Under the broader standard, employers could argue that its reputation or goodwill are worth protecting with noncompetes, experts said.

That also means potentially more lawsuits to figure out how to define the "totality of the facts and circumstances."

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