

Illinois Court Creates a Bright Line Rule in the Enforcement of Restrictive Covenants in Employment Agreements

On June 24, 2013, the Appellate Court of Illinois changed the law on noncompetition provisions as they relate to employment agreements. Previously, the only guidance on the restrictive covenants in employment agreements stated that, “continued employment for a substantial period of time beyond the threat of discharge was sufficient consideration to support a restrictive covenant in an employment agreement.” *Brown & Brown, Inc. v. Mudron*, 379 Ill.App.3d 724, 728, 320 Ill.Dec. 293, 887 N.E.2d 437 (2008). The *Fifield* decision gives more direction, stating that there must be at least two years or more of continued employment to constitute adequate consideration in support of a restrictive covenant. *Fifield v. Premier Dealer Services, Inc.* 2013 IL App (1st) 120372.

In *Fifield*, an employee worked for an insurance administrator that was sold to another company. The employee was offered a job with the new company and in accepting the position was required to sign an agreement that contained a 2-year, post-employment noncompetition and non-solicitation provision. Three months after signing the agreement the employee resigned and began working for a competitor. The employee and the new employer petitioned the court to declare the noncompetition and non-solicitation provision of the agreement unenforceable. The trial court obliged and declared the provisions invalid for lack of consideration.

The Illinois Appellate Court clarified the law regarding consideration, stating there must be at least two years or more of continued employment to constitute adequate consideration. This rule includes both employee terminations and *resignations* effectuated less than two years from the employee’s start date. The *Fifield* decision also holds that whether the agreement is signed pre or post-employment is of no consequence when discussing the issue of consideration. It is now a bright line rule that if the employee does not reach their 2-year anniversary, any noncompetition and/or non-solicitation clause in the employment agreement will fail for lack of consideration.

The holding of *Fifield* affects all current and future noncompetition and non-solicitation clauses in employment agreements in the state of Illinois. There must be another form of consideration between the employer and employee to avoid the mandatory 2-year employment rule. Continued employment will only be considered a satisfactory condition if it is at least two years, however, new employment will not be satisfactory consideration; there must be something more, some monetary or other tangible benefit.

It is important to keep in mind that these changes take effect immediately and all employment agreements in the state of Illinois are subject to the mandatory 2-year employment rule. This rule impacts both parties to an employment agreement and will effectively change the way that agreements are negotiated and enforced.

For further information on the effect of this holding, please contact the following Roetzel attorney:

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