

Ruling Gives Companies a Little More Protection

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A landmark decision was recently issued by the Fourth District appellate court in Springfield making restrictive covenants substantially easier to enforce in central Illinois. As a result, businesses in central Illinois will have greater control over the activities of departing employees.

For years, many Illinois businesses have used restrictive covenants to protect their customer relationships and confidential information. Such covenants, which are typically part of employment agreements, provide that employees cannot solicit the company's customers or otherwise compete with the company after the termination of their employment. Recognizing that such covenants are a restraint of trade and detrimental to employees' job prospects, Illinois courts have historically not looked favorably on them and have imposed strict requirements that must be met in order for the covenants to be enforceable.

For the past several decades, Illinois courts have held that in order to be enforceable, restrictive covenants must: 1.) be reasonable in scope, and 2.) protect a legitimate business interest. The reasonable scope requirement is generally easy to meet: The employer essentially has to include time and territory limits that are rational. The legitimate business interest, which requires the company to demonstrate that the agreement is designed to protect confidential information or near-permanent customer relationships, is much harder to meet. Courts have taken a strict view of what types of information or relationships satisfy this test. The result is that companies trying to enforce restrictive covenants often are unsuccessful because they cannot pass the legitimate business interest test.

Ultimately, this is an issue that will likely find its way to the Illinois Supreme Court for the final say. In the meantime, though, businesses in central Illinois should be encouraged that their efforts to protect their customer relationships and confidential relationships are more likely to be successful.

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