



Employees Laid Off As A Result Of COVID-19 Ask Courts To Find Their Non-Compete Agreements Unenforceable

Insights

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Since the onset of COVID-19 and the related business shut-downs, employers across the country have been forced to make the difficult decision to lay off or terminate many of their employees. Of the tens of millions who have been impacted to date, several hundred individuals have already filed suit against their former employers, bringing claims ranging from racial and religious discrimination to alleged violations of the Family First Coronavirus Response Act. Fisher Phillips has been closely tracking these and other COVID-19-related lawsuits in our [COVID-19 Employment Litigation Tracker](#). Recently, a new trend in COVID-19-related litigation has emerged: employees who had previously signed non-compete and other restrictive covenant agreements with their former employers are now asking courts to declare those agreements unenforceable.

Frequently, an employer will file suit seeking injunctive relief and damages to stop a former employee who signed a non-compete or other restrictive covenant agreement from violating that agreement after the employee resigns. By contrast to those common enforcement cases, the COVID-19-related restrictive covenant lawsuits being filed involve employees who did not resign but were laid off by their former employers due to the global pandemic. A common question emerges in all these suits: does an employer's decision to lay off employees during the current health crisis affect its ability to enforce its restrictive covenants against those employees?

Recent Examples Of COVID-19-Related Restrictive Covenant Lawsuits

As the examples discussed below are in their very early stages, it is difficult to predict how the courts will handle this issue. Historically, many courts have expressed general reluctance to enforce covenants in situations where employees have been let go by their employer through no fault of their own. Will the added factor of the global pandemic increase the likelihood that courts will find these non-compete and other restrictive covenant agreements unenforceable? Fisher Phillips will continue to monitor these cases and provide updates on further developments.

***Blessinger, et al. v. Wipfli, LLP* (Gallatin County, Montana) (filed June 18, 2020)**

Kyle Blessinger, a certified public accountant, filed suit against his former employer Wipfli, LLP, a large financial advising, audit, and accounting firm. He is seeking a declaratory judgment that the non-competition and non-solicitation covenants he signed are invalid and unenforceable under Montana law and public policy.

Blessinger had been a staff accountant and then manager for the firm Galusha, Higgins, Galusha, PC, when the firm merged with Wipfli in 2015. At the time of the merger, he signed a Confidentiality and Restrictive Covenant Agreement, but alleges he did not receive a promotion, raise, or bonus in exchange for signing the Agreement. Wipfli terminated Blessinger's employment on May 4, 2020. The termination letter stated, in part:

The COVID-19 pandemic has resulted in unprecedented impacts on lives and businesses throughout the world. During recent weeks, Firm leaders evaluated current business conditions and staffing levels with a focus on resource utilization and operational effectiveness. Unfortunately, the result of the evaluation indicated that current business demand and expectations for future needs no longer allow us to continue your ongoing employment with the Firm.

Following his termination, Blessinger formed Montana Accounting Group, LLC, and, according to his legal filings, many of his clients at Wipfli "have expressed their desire to retain Blessinger as their accountant and have asked Wipfli to transfer their files to Montana Accounting Group, LLC." Blessinger alleges that Wipfli threatened to sue him if he provides accounting services to his former Wipfli clients in violation of the Agreement.

In his Complaint, Blessinger alleges that Wipfli terminated his employment without cause and due to the COVID-19 pandemic. As a result, he maintains that Wipfli's attempt to enforce the Agreement against him violates Montana law, which "strongly disfavors covenants not to compete," especially when "an employer chooses to end the employment relationship and yet seeks to enforce the covenant not to compete." Blessinger has asked the court for an order stating that the Agreement is invalid and unenforceable, as well as an award for attorneys' fees, costs, and any other relief the court deems necessary.

***Grissinger v. Cross Keys Management Inc., et al.* (Bucks County, Pennsylvania) (filed August 27, 2020)**

Jan Grissinger, a real estate recruiter, filed suit against her former employer seeking a declaratory judgment that the non-compete agreement she signed is unenforceable. Her complaint also seeks a permanent injunction to restrict her former employer from enforcing the restrictive covenant, and monetary damages for tortious interference with prospective employment.

Grissinger alleges that she was furloughed from her position as a Talent Acquisition Specialist with Coldwell Banker Hearthside Realtors (CBH) on March 20, 2020, due to the COVID-19 crisis. Upon commencing employment with CBH in 2017, Grissinger entered into an employment agreement that included covenants restricting her from competing as a real estate recruiter in three Pennsylvania counties and from soliciting customers or employees of CBH for a period of two years post-termination.

Grissinger claims that she has received several offers of employment since her furlough and termination, but that each prospective employer has requested that she obtain a release from the

termination, but that each prospective employer has requested that she obtain a release from the non-compete with CBH as a condition of employment. According to Grissinger, her form employer refuses to release her from any of the limitations of the non-compete agreement and that, as a result, she has lost valuable employment opportunities and will likely lose other opportunities in the future.

In addition to declaratory relief invalidating the non-compete and injunctive relief to prevent her former employer from enforcing the Agreement, Grissinger is seeking punitive damages for what she maintains is willful and outrageous conduct on their part, designed to destroy her career and eliminate fair competition.

Monaldi v. Silverwell Technology, Inc. (Harris County, Texas) (filed August 28, 2020)

Kenneth Monaldi filed suit against his former employer Silverwell Technology, Inc. seeking declaratory relief and attorney's fees in connection with Silverwell's alleged threats to enforce the terms of the non-compete agreement in his employment contract.

Monaldi alleges that he was advised in April 2020 that his employment as Silverwell's North American Sales Manager would end on July 15 as a result of "extraordinary circumstances," which Monaldi interpreted as economic pressures confronting the company as a result of the COVID-19 pandemic. According to Monaldi, after he sought out and obtained alternate employment with Precise Downhole Services, Ltd., Silverwell "began engaging in efforts to retreat from its termination notice," but Monaldi "made it clear that he accepted alternate employment and was not willing to return to work for the company that had just terminated him."

Thereafter, Monaldi received a "reminder" through Silverwell's counsel, of his "ongoing confidentiality and restrictive covenant obligations." Monaldi took the reminder "as a veiled threat" and filed suit seeking a permanent injunction to prevent Silverwell from enforcing the restrictive covenant provisions. The legal filing also asked the court to declare that the non-competition restrictions are unenforceable and not reasonable in terms of the scope of activity to be restrained, the time of the restriction, and the geographical territory encompassed in the restrictions. Monaldi maintains that any attempt to enforce the terms of the non-compete agreement would not be appropriate because he was terminated without cause. He also alleges the restrictions impose a greater restraint on him than is reasonably necessary to protect the legitimate goodwill expectations of Silverwell, especially in light of the termination.

How to Prepare for Similar Claims

Because each employment relationship is unique, a court's decision in these types of cases requires a highly fact-intensive inquiry and must be decided on a case-by-case basis. The balancing of interests likely will be the most critical aspect of restrictive covenant disputes arising from pandemic-based layoffs.

While each of the above cases is in its infancy and the courts have not ruled on the substance of the plaintiffs' complaints, employers should be familiar with the potential issues and defenses available

planning complaints, employers should be familiar with the potential issues and defenses available.

Fisher Phillips' [Employee Defection and Trade Secrets Practice Group](#) includes team members who handle these types of cases and who can provide valuable advice should this situation arise.

To gather the most up-to-date information about COVID-19-related litigation being filed across the country, make sure you are subscribed to [Fisher Phillips' alert system](#) and continue to check out our [COVID-19 Employment Litigation Tracker](#). For further information, contact your Fisher Phillips attorney.

This Legal Alert provides an overview of a specific developing situation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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