Supreme Court of Pennsylvania Provides A 7-Step Roadmap to Employers While Striking Down No-Hire Agreement

Insights
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In a decision resolving a dispute that has been pending for nearly five years, the Supreme Court of Pennsylvania just voided a no-hire provision entered into by two companies that bound one of them from hiring former employees of the other's business. While the April 29 decision in *Pittsburgh Logistics Systems, Inc. v. Beemac Trucking, LLC* did not hold these no-hire agreements – sometimes referred to as no-poach agreements – to be *per* se unenforceable under Pennsylvania law, it identified several important factors that employers must consider before entering into contracts that place restrictions on the movement of their employees. This article provides you with a seven-step plan to consider in order to maximize your chances of success in this area.

Background on No-Poach Agreements

While restrictive covenants that limit where an employee may work and what they can do following the termination of their employment are common in employment agreements, such restrictions sometimes make their way into contracts between two companies. While the purpose of these no-poach agreements may be understandable from the point of view of the companies entering into the contract, the U.S. Department of Justice and state government officials have elevated scrutiny of these provisions in recent years, raising concerns about the anti-competitive impact on the employees who are not parties to the contract. Courts are increasingly being asked to assess the enforceability of such provisions. Pennsylvania is the latest state to enter the fray.

Case Facts And Decision

Pittsburgh Logistics (PLS) is a third-party logistics coordinator that organizes shipping for its customers with selected trucking companies, including Beemac. PLS and Beemac entered into a service contract that prohibited Beemac from hiring or soliciting PLS employees for the duration of the contract, and then for a period of two years after its termination.

While the contract was still in effect, Beemac hired four PLS employees. PLS initiated a suit for injunctive relief against Beemac, and the trial court issued an in initial order blocking Beemac from employing the four workers. But after a hearing, the court found the no-hire clause to be void against public policy because it bound PLS employees by a non-compete agreement to which they never consented, and permitted the work arrangement to proceed. PLS appealed the decision to the state's highest court – which just ruled in favor of the employees and Beemac.

Before reaching its decision, the Supreme Court first conducted a lengthy survey of the divided views of jurisdictions around the country on the enforceability of no-hire provisions between companies. Determining that the no-hire provision was a restraint of trade ancillary to the principal purpose of the services contract, the Court employed a balancing test to determine the reasonableness of the restraint in light of the interest being protected compared with the harm to the other contracting party and the public. Importantly, the Court agreed that PLS has a legitimate interest in preventing its business partners from poaching employees with specialized knowledge. However, the Court held that the no-hire provision was broader than necessary to protect this interest – and thereby created harm to the public in the process. The Court noted in particular that:

- The no-hire provision prevented Beeman from hiring or soliciting all employees of PLS and its affiliates, regardless of whether they had ever worked with Beemac;
- The no-hire provision impaired the employment opportunities and job mobility of PLS employees who were not a party to the contract, never consented to the limitation, and never received consideration in exchange for the restriction; and
- The no-hire provision impeded competition in the labor market of an entire industry.

Balancing these factors against the interests that PLS sought to protect, the Court concluded that the no-hire provision was an unreasonable restraint of trade and therefore unenforceable.

7 Key Takeaways

It is understandable why a firm might want to enter into an agreement that restricts the ability of another firm to recruit and hire its employees. In the case discussed above, PLS was looking to protect the confidential information and specialized training provided to its employees. Firms may have concerns that, without a negotiated no-hire agreement, customers and vendors may try to "cut out the middleman," luring away the firm's employees and undermining the very existence of the firm. Some companies may find a no-hire agreement to be an essential element to the settlement of litigation.

The *Pittsburgh Logistics* decision does not prohibit Pennsylvania employers from entering into a contract containing a no-hire agreement or enforcing such an agreement in court. Instead, it sets a seven-step roadmap that you must consider if you want to prepare valid and enforceable no-hire agreements.

1. First, the agreement must be **ancillary to the principal purpose of a contract**.
2. Next, it must **protect a legitimate business interest**, such as PLS's interest in preventing a business partner from poaching its highly-skilled employees.
3. Finally, the restrictions of the no-hire agreement must be **reasonable relative to the interest being protected**. Factors impacting reasonableness include geographic scope and duration of time, as well as harm to the other contracting party and the public.

4. Like other restrictive covenants, the no-hire agreement must be **narrowly tailored to accomplish its purpose**. By way of example, no-hire agreements should be limited to the smallest set of employees for the shortest amount of time and narrowest geographic scope possible to effect the purpose.
5. To address the Court's concern about the impact on employees who did not know about or consent to the no-hire provision, **you should consider including in employment agreements or restrictive covenants a non-compete provision applicable to a defined set of entities**, such as vendors, customers, and/or joint ventures, with which the company anticipates entering into no-hire agreements.
6. Alternatively, you could include **more general language in employment agreements** that the employee acknowledges that your company may enter into agreements that could impact their ability to work at certain other entities following the termination of their employment.
7. Finally, you should evaluate whether a **non-solicitation agreement**, which does not impair employment mobility, might accomplish your goals.

The reasonableness of a no-hire agreement is ultimately a fact-intensive inquiry, and employers seeking to enforce them in a Pennsylvania court should be prepared to articulate both the interest being protected and factors explaining why the no-hire agreement is the narrowest and most reasonable means of protecting that interest. You should seek counsel when considering utilizing no-hire agreements in non-employment contracts to ensure that you are in the best position to enforce those agreements in court when the time comes.

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