



New Illinois Restrictive Covenant Law Ushers in New Day for Financial Services Employers

Insights

2.17.22

Illinois recently joined a growing number of states by enacting tighter restrictions on the enforceability of workplace restrictive covenants – and financial services firms both in and out of Illinois need to start facing a new future. The Illinois Freedom to Work Act (IFWA), which just went into effect on January 1 and applies to contracts entered into on or after that date, establishes important guidelines for the restrictive covenant agreements that financial services employers have long used to protect their trade secrets, confidential information, and customer goodwill. What do financial services businesses need to know about this significant development?

Key Provisions for Illinois Financial Services Firms

The IFWA in part codifies longstanding Illinois common law, but also adds several key parameters governing the enforceability of employee non-competition and non-solicitation covenants entered into after the effective date. [You can read a thorough summary of the new law here](#), but notable provisions relevant for members of the financial services industry include:

- Employers must provide employees with at least 14 days to consider whether to sign a restrictive covenant and must further advise the employee of their right to consult an attorney before entering into the covenant. While the employee can sign the restrictive covenant agreement before the 14-day period has expired, employers in the financial services industry – where an accelerated start date is sometimes required – must keep this provision in mind.
- There is “adequate consideration” to support a restrictive covenant where either (1) the employee has worked for the employer for at least two years after signing the covenant; or (2) the employee has received “professional or financial benefits” in exchange for entering into the covenant.
- A non-competition covenant is not enforceable until the employee’s expected annual earnings exceed \$75,000. A non-solicitation covenant is not enforceable until the employee’s expected annual earnings exceed \$45,000. Financial services employers should keep these minimums, which are subject to increase, in mind when preparing to enforce restrictive covenants against former employees.
- Employers may not enforce non-competition and non-solicitation covenants against an employee who loses their job due to COVID-19 or to “circumstances that are similar to the COVID-19 pandemic” unless the employers provide the employee with the equivalent of their base salary

for the duration of the restricted period, less any compensation earned through subsequent employment.

The legislature further enacted a critical hook to compel compliance with the new amendments to the IFWA – an employee can recover their attorneys’ fees and costs if they prevail in any civil court or arbitration action brought by their employer to enforce a restrictive covenant.

Next Steps for Financial Services Businesses

To be clear, financial services firms can still utilize non-competition and non-solicitation agreements to protect their interests in Illinois. However, you must be mindful of the new provisions of the IFWA when new restrictive covenant agreements to ensure the continued enforceability of those agreements.

And the enactment of this new law serves as a good reminder for businesses outside of Illinois that restrictive covenant law varies widely from state to state. Some employers may already be shackled by similar (or even more onerous) restrictions in their states, and you can bet that lawmakers across the country will be monitoring what goes on in Illinois to determine whether they should take a similar approach in their state.

Conclusion

While no court has considered the new IFWA provisions yet, Fisher Phillips will continue to monitor the latest developments, so make sure that you are subscribed to [Fisher Phillips’ Insights](#) to get the most up-to-date information direct to your inbox. If you have questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney on our [Financial Services Industry Team](#).

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