



Illinois Attorney General Wages War Against Low-Wage Non-Competes

Insights

10.30.17

Last week, the Attorney General of Illinois filed suit against Check Into Cash, LLC, alleging that the payday lender required its low-wage customer service employees to agree to illegal non-compete agreements in violation of Illinois law. The lawsuit is another example of the Attorney General's fight against illegal non-competes and marks the first time the Attorney General has brought a claim under the Illinois Freedom to Work Act, 820 ILCS 90/1.

People of the State of Illinois v. Check Into Cash of Illinois, LLC

According to the Illinois Attorney General's complaint, as a condition of employment, Check Into Cash required all store employees, including those making under \$13 an hour, to agree to a one-year non-compete. The suit alleges that the non-compete prohibits all store employees from working "directly or indirectly . . . as an employee, officer, consultant, or in any other capacity, for any individual, firm or entity, which provides deferred presentment, deferred deposit, and/or any other payday advance services, . . . and/or any other consumer lending services or money services."

Under Illinois law, non-compete agreements must be premised on a legitimate business interest and narrowly tailored in terms of time, activity, and place. In addition, under the newly enacted Illinois Freedom to Work Act, employers are prohibited from entering into non-competes with employees who make less than \$13 an hour.

In contrast to the permissible scope of non-competes under Illinois law, the suit contends that the non-compete in question: (1) prohibits employees from working within 15 miles of any Check Into Cash location, not just the store the employee works in; (2) prohibits employees from working for any company that directly or indirectly provides consumer lending services, regardless of whether that company competes with Check Into Cash; (3) applies equally to all store employees, regardless of position or time spent with the company; and (4) applies to employees who make less than \$13 an hour.

Check Into Cash has not yet responded to the Complaint.

Takeaways

Illinois Employers Should Review their Non-Competes: All non-governmental Illinois employers should review their non-compete agreements to ensure compliance with Illinois law. All restrictive covenants should: (1) be supported by adequate consideration; (2) narrowly tailored, in time, activity,

and geography, to protect the employer's legitimate business interests; and (3) not apply to low-wage employees as defined by the Freedom to Work Act. If the employer is concerned about a low-wage employee's exposure to trade secret information, they should also consider other means of protection, such as confidentiality agreements.

Expect more Enforcement Actions from the Illinois Attorney General: Though this lawsuit marks the first time that the Illinois Attorney General has sought to enforce an alleged violation of the Freedom to Work Act, it likely will not be the last. Well-publicized Attorney General actions have a way of encouraging those harmed by similar conduct to speak up. Indeed, the press release announcing the Check Into Cash suit noted that the Attorney General's office is currently investigating other companies that have unlawfully imposed similarly restrictive agreements on low-wage workers.

Be on the Watch for Similar State Laws: Some states, such as New York and Massachusetts have attempted to pass similar prohibitions on restrictive covenants for low-wage employees. Others, such as Hawaii (technology) and New Mexico (health care), have passed prohibitions on restrictive covenants for employees in certain fields.^[1]

We will continue to monitor developments and provide updates as they are available.

^[1] Steve Lohr, *To Compete Better, States Are Trying to Curb Noncompete Pacts*, N.Y. Times, June 28, 2016.