



Establishing Personal Jurisdiction Over Remote Employees

Insights

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According to a recent Gallup poll, thirty-seven percent (37%) of U.S. workers report that they telecommute or otherwise work remotely. Indeed, due to advances in technology, many employees never report to an office of their employer, but instead use technology to conduct business on behalf of their employer from a remote location. Remote employment, however, raises challenges that the law is just now beginning to resolve. One such challenge is whether it is fair for an employer to haul remote employees into a distant district court in order to enforce restrictive covenants and/or common law obligations to the employer. This presents a new twist for the age-old problem of jurisdiction and venue in restrictive covenant disputes.

The United States District Court for the Eastern District of Pennsylvania recently addressed this issue in *Numeric Analytics, LLC v. McCabe*, No. 16-51, 2016 WL 492476 (Feb. 9, 2016). In *McCabe*, the employer, a Pennsylvania company, filed a single lawsuit against five geographically remote departed employees, claiming that the former employees violated non-solicitation agreements by leaving the plaintiff's employ, starting a competing business, and wrongfully soliciting the plaintiff's clients. The former employees filed a Motion to Dismiss, challenging that the agreements at issue did not contain forum-selection clauses and that the Court did not have personal jurisdiction over them because they did not live in Pennsylvania (the defendants lived in Colorado, Ohio, Wisconsin and Virginia), they did not work in Pennsylvania, and many of the defendants had never been to Pennsylvania for any work-related purpose.

In considering whether it had personal jurisdiction over the plaintiff's breach of contract claims, the Court analyzed whether the defendants had minimum contacts with Pennsylvania such that maintenance of the litigation in the Eastern District of Pennsylvania did not "offend traditional notions of fair play and substantial justice." Ultimately, the Court concluded it had personal jurisdiction over the defendants for purposes of the plaintiff's breach of contract claims because: (1) the former employer's back office personnel management occurred in Pennsylvania; (2) medical coverage, medical benefits and retirement plans were administered from Pennsylvania; (3) timekeeping, customer billing and email were managed by Pennsylvania; and (4) the plaintiff paid the defendants' salaries using a Pennsylvania bank. The Court did state, however, that the mere existence of contract, by itself, would have been insufficient to establish that the defendants had minimum contacts with Pennsylvania.

Although the Court recognized the burden on defendants in being forced to litigate in a distant court,

the Court found that the plaintiff's interest in litigating in a single forum outweighed the burden on defendants. The Court stated: "The benefits that flow from e-commerce, such as not having to relocate to accept a position, and the flexibility of work-from-home employment can be tempered with corresponding obligations to the employer."

With regard to the plaintiff's common law breach of duty of loyalty claims, the Court held that it did not have personal jurisdiction over the defendants. In evaluating the plaintiff's tort claims, the Court considered whether the plaintiff felt the brunt of the harm in the forum state, Pennsylvania, and whether the defendants expressly aimed their tortious conduct at Pennsylvania such that Pennsylvania was the focal point of the tortious activity. The Court held that the conduct at issue - the solicitation of non-Pennsylvania residents - did not deliberately target Pennsylvania.

Given the above, employers should be careful to include forum selection clauses in all agreements with remote employees. In addition, employers should be cognizant that if they are not able to establish minimum contacts and/or deliberate conduct directed toward a specific state, they may be forced to litigate claims against departed employees in far-flung locations.

[Numeric Analytics LLC v McCabe.pdf \(87.96 kb\)](#)

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