

Illinois Joins the Mainstream With Respect to Non-Competes

Insights

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The Illinois Supreme Court recently brought Illinois into the mainstream of non-compete agreements. Like a majority of states across the country, Illinois courts must now determine whether an employer has a legitimate business interest that warrants the imposition of a restrictive covenant, whether the covenant presents an undue burden, and whether it is contrary to the public interest. In short, Illinois courts must determine whether a restrictive covenant is reasonable under the circumstances.

Prior to the Supreme Court's decision, which is available in pdf format below, a variety of Illinois intermediate appellate courts had produced "erroneous" standards for determining whether a restrictive covenant is enforceable under Illinois law. One appellate court had suggested employers could impose a restrictive covenant regardless of whether the employer could establish a legitimate business interest. Although the majority of Illinois courts disagreed with this approach, they apparently perpetuated a separate error. Namely, they limited the list of legitimate interests an

employer could seek to protect. The Illinois Supreme Court has now clarified the standards to be applied, and they are not terribly different than the standards applied in a majority of states.

Illinois courts are to apply a three-pronged reasonableness test. A restrictive covenant, assuming it is ancillary to a valid employment relationship, is reasonable only if the covenant: (1) is no greater than is required for the protection of a legitimate business interest of the employer-promisee; (2) does not impose undue hardship on the employee-promisor, and (3) is not injurious to the public.

Whether a legitimate business interest exists is based on the totality of the facts and circumstances of the individual case. Factors to be considered in this analysis include, but are not limited to, the near-permanence of customer relationships, the employee's acquisition of confidential information through his employment, and time and place restrictions. Importantly, no factor carries any more weight than any other, but rather the importance of each factor will depend on the specific facts and circumstances of the individual case. To emphasize this point, the Supreme Court explained:

"Each case must be determined on its own particular facts. Reasonableness is gauged not just by some but by all of the circumstances. The same identical contract and restraint may be reasonable and valid under one set of circumstances, and unreasonable and invalid under another set of circumstances."

Michael R. Greco is a partner in the Employee Defection & Trade Secrets Practice Group at Fisher Phillips. To receive notice of future blog posts either [follow Michael R. Greco on Twitter](#) or on [LinkedIn](#) or subscribe to this blog's RSS feed.

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Michael R. Greco
Regional Managing Partner
303.218.3655
Email

