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Dim Future For Ill. Bright-Line Competition Restrictions

Law360, New York (February 17, 2015, 1:32 PM EST) -- On Feb. 6, 2015, the U.S. District Court for the Northern District of Illinois in Chicago rejected the bright-line rule, created by an Illinois appellate court in the often maligned Fifield v. Premier Dealer Services Inc. decision, requiring that continued at-will employment last at least two years in order to constitute adequate consideration for the enforcement of competition restrictions. See Bankers Life and Casualty Co. v. Miller, 2015 U.S. Dist. LEXIS 14337 (N.D. Ill. Feb. 6, 2015) (Shah, J.). In rejecting the Fifield rule, the district court explained that given recent precedent emphasizing the need to consider the "totality of circumstances" in evaluating competition restrictions, the Illinois Supreme Court "would not adopt a bright-line rule requiring continued employment for at least two years in all cases." Id. at *11-12.

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Competition Restrictions at Issue

Bankers Life and Casualty Co. involves the fairly typical scenario of a group of departing insurance sales employees that left Bankers Life to join a competitor in a similar capacity. Bankers Life brought suit against seven of the nine departing employees alleging they breached their contractual restrictions not to solicit Bankers Life customers and employees, and not to use or disclose its confidential information. The departing employees filed a motion to dismiss the action on the basis that the competition restrictions were unenforceable for lack of adequate consideration. More specifically, they argued that their continued at-will employment for less than two years was insufficient consideration to enforce the competition restrictions under Illinois law.

Federal Court Ruling

The district court denied the motion to dismiss and held that the competition restrictions were not invalid for lack of consideration as a matter of law on the basis that the departing employees' tenure lasted less than two years. The court refused to accept the rigid rule urged by the departing employees that "Illinois applies a bright-line rule requiring, in all cases, two years or more of continued employment." Id. at *11.

The Bankers Life decision by Judge Manish S. Shah, one of the newest judges in the Northern District of Illinois, rejects the Illinois appellate court's analysis in Fifield that prior Illinois precedent required at least two years of continued employment to support a competition restriction in all circumstances and regardless of whether the employee is

terminated or voluntarily resigns. In rejecting Fifield, the court found it significant that the Illinois Supreme Court's 2011 decision in Reliable Fire Equip. Co. v. Arredondo denounced a rigid approach in determining whether a competition restriction was enforceable and favored a "rule of reason, grounded in the totality of the circumstances, under which each case must be determined on its own particular facts." Id. at *11-12 (internal citations omitted).

Split of Authority in Northern District of Illinois

The Bankers Life decision is significant because it is the third reported case in the Northern District of Illinois to directly address the Fifield decision — making it 2-1 in favor of rejecting Fified's bright-line rule for enforcement of competition restrictions in the Northern District of Illinois.

Bankers Life is in accord with Chief Judge Ruben Castillo's decision last year in Montel Aetnastak Inc. v. Miessen, 998 F. Supp. 2d 694 (N.D. Ill. 2014), rejecting Fifield's bright-line rule and holding that 15 months of continued employment was sufficient consideration given the employee's voluntary resignation to support a competition restriction.

In contrast, former Chief Judge James F. Holderman followed Fifield's bright-line rule in Instant Technology LLC v. Defazio, 2014 U.S. Dist. LEXIS 61232 (N.D. Ill. May 2, 2014), in holding that competition restrictions for a group of three departing employees were not enforceable where they all worked less than two years (10, 19 and 21 months, respectively) and received only their employment in exchange for their agreement to the competition restrictions. The Instant Technology decision is currently on appeal to the Seventh Circuit and warrants continued monitoring in the event the Seventh Circuit addresses Fifield's bright-line rule.

Lessons for Employers

Employers seeking to enforce competition restrictions in Illinois federal court may take advantage of this latest decision by making a strong argument for a case-by-case assessment of whether there is sufficient consideration, rather than application of a bright-line test. In addition, employers should note the following implications of this recent decision.

- Timing of the action and proper venue may be critical as the enforceability of the competition restriction could turn on whether the action is brought in Illinois state court or federal court, or alternatively, in a jurisdiction outside of Illinois.

- The potential for forum shopping is greatly increased. Employers may face an increase in declaratory judgment actions, particularly those brought by employees in Cook County, seeking to take advantage of the Fifield ruling in Illinois state court.

- Given the uncertainty over the consideration needed to enforce competition restrictions under Illinois law, employers should consider revisiting their competition agreements to include additional consideration, such as a signing bonus, stock award, periodic bonus plan, salary increase, promotion, separation pay, increased access to confidential information or new customer accounts, additional duties and responsibilities, guarantee of employment for a set period or other tangible or new benefits made contingent on signing competition agreements.

- Finally, employers should be mindful that even if a competition restriction is unenforceable, there are other available means to address unfair competition by departing employees, regardless of their tenure, including claims under the Illinois Trade Secrets Act, as well as claims for breach of fiduciary duty and duty of loyalty, unlawful employee pirating, tortious interference with prospective economic advantage stemming from improper customer solicitations, unfair competition, unjust enrichment and conversion.

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