

insights

Illinois employers face decision as appellate court limits offer of at-will employment as consideration for competition restrictions

The First District of the Illinois Appellate Court (which covers Cook County) recently ruled that at-will employment is inadequate consideration for a new hire's agreement to post-termination competition restrictions, unless the employment lasts two years. The ruling extends prior decisions that imposed the same two-year requirement when an existing employee signs post-termination competition restrictions. The restrictions are unenforceable if employment ends before two years, regardless of whether the employee quits or is fired with or without cause.

The new decision, *Fifield v. Premier Dealer Svcs, Inc.*, upends a long-standing assumption that hiring an employee on a terminable at-will basis is adequate consideration for post-termination restrictions signed at the time of hiring. The decision is still subject to reconsideration by the First District or appeal to the Illinois Supreme Court, but does not appear to conflict with any prior court decisions.

Unlike the rule for other contracts, an employee must receive an adequate benefit in return for signing a post-termination restriction. An employment contract for a fixed term, or that is terminable only for cause is generally an adequate benefit. Other forms of consideration, such as a signing bonus, a raise, profit or stock participation, or a promise of severance if the employee is later terminated without cause, have also been held adequate. However, no rule or test exists, for example, on how large a bonus must be to be deemed adequate. That is likely to depend on factors such as how extensive the restrictions are, their duration, and the size of the bonus relative to base compensation. Employers, therefore, should work with their counsel to draft new agreements that will meet the evolving Illinois standards.

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