

Mere Employment Not Enough Consideration for Non-Compete Provision

Being employed for less than two years is not sufficient consideration for enforcing a non-compete agreement in Illinois, a state appellate court ruled.

The issue arose when an employee quit his job after three months. His employment contract included a non-compete agreement restricting his employment for two years after he terminated his employment for any reason. The employee filed a declaratory judgment action to void several provisions of his employment agreement including the non-compete provision, which he claimed lacked adequate consideration. The trial court agreed.

In affirming the trial court, the appellate court noted that Illinois courts traditionally require two years of employment as consideration for a non-compete provision. However, if the employee is not employed for the full two years, then the mere promise of employment is not sufficient when the employment is at will. “The restrictive covenant will not be enforced unless there is adequate consideration given,” the court wrote.

In finding that the two years of employment must actually have occurred, the court rejected the employer’s argument that employment under the agreement was sufficient consideration to support the non-compete provision. The two-year rule applies “even if the employee resigns on his own instead of being terminated,” the court found. “In this case, Fifield resigned from Premier after being employed for slightly longer than three months. This period of time is far short of the two years required for adequate consideration under Illinois law.”

Fifield et al. v. Premier Dealer Services, Inc., First District, Illinois, issued June 24, 2013.