

Fifield Appeal Denied – New Rule Regarding Consideration For Restrictive Covenants In Illinois Survives

October 7, 2013 | [Non-competes And Trade Secrets, Currents - Employment Law](#)

Illinois

Recently, the Illinois Supreme Court denied the Petitioner's leave to appeal in *Fifield v. Premier Dealer Services, Inc.*, No. 1-12-0327, 2013 IL App (1st) 120327 (Jun. 24, 2013), leaving Illinois employers stuck with greater hurdles than ever before when attempting to protect their legitimate business interests through the enforcement of post-employment restrictive covenants. Specifically, the Illinois Appellate Court for the First District ruled that – when the only consideration is employment itself – two years of continued employment is necessary to support the enforcement of post-employment restrictive covenants, regardless of when the restrictive covenant was signed. In *Fifield*, the plaintiff negotiated and ultimately signed an employment agreement containing non-competition and non-solicitation provisions in consideration for his new employment with Premier. Three months after he began, he resigned and went to work for another employer. Soon after, Premier sought to enforce the restrictive covenants and the trial court found them unenforceable for lack of consideration. The appellate court upheld this ruling, ignoring years of precedent establishing that the job itself is adequate consideration for an employee signing a restrictive covenant at the outset of his or her employment. Rather, the court relied on cases in which the plaintiffs had signed restrictive covenants months after their employment had already begun and received no additional benefits as consideration for signing. In such cases, continued employment has been held to constitute adequate consideration, so long as the continued employment was “substantial” – typically found to be two years in most cases (but even less in some). Finding no distinction between such “afterthought covenants” and covenants signed at the outset of employment, the court held that a minimum of two years of continued employment is required consideration in either situation – when the only consideration is employment itself. As a result of this decision, Illinois employers should review their agreements with legal counsel to ensure that their legitimate business interests remain protected.

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