

Pennsylvania Supreme Court “Considers” Noncompetes: Mere Continued Employment Not Enough

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**William A.
Nolan**
Partner
Columbus
Managing Partner

In what has been a remarkable run of state supreme court cases out of the heartland addressing the question of what consideration will be sufficient to support a noncompete, yesterday the Pennsylvania Supreme Court came down on the anti-enforcement side of this question, holding that any restriction on employment requires some additional benefit beyond continued employment. In other words, an employer cannot hand a noncompete to a long-term employee and have it be enforceable unless the employer provides some additional value to the employee. Pennsylvania thereby joins Illinois and Kentucky as states in which recent decisions have held that mere continuing employment is insufficient to support a noncompete. In contrast, most recently [Wisconsin](#) took a more pro-enforcement view, holding that continued employment was consideration. The Pennsylvania decision may be read [here](#). What consideration supports noncompetes is one of two key variables in state laws relating to noncompetes, and probably the trickier of the two. (The other is the extent to which a court will modify a noncompete to make it reasonable.) As discussed in the Wisconsin article linked above, employers need to be aware of the law in states where they might be “competed with,” regardless of what their noncompete agreement may say about choice of law because other states’ courts often will not observe the parties’ choice of law. If you do business in Pennsylvania, or you have competitors competing with you from Pennsylvania, make sure you talk to experienced legal counsel about your noncompete program to make sure you are properly accounting for all of the recent judicial activity on this key issue. P.S. As I have suggested [here](#) before, probably do not take too seriously the articles likely to follow declaring this to be the most recent step in the death of noncompetes. Not likely.

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