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Indiana Follows Illinois In Key Non-Compete Decisions From The Heartland

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With apologies to Iowa, home to the somewhat famous (infamous?) case of the dental assistant fired for being irresistible, and Idaho, Letter of the Law this week features two of the “I states” for some of the more noteworthy non-compete decisions of the last year. As readers know, the key driver in non-compete drafting and enforcement often is the dynamic of varying state laws. Employers and practitioners need to keep tabs on developments outside their own state because, try as they might to stay on their home court, most employers could find themselves litigating a non-compete issue in a state applying its own non-compete rules, and those rules vary in important ways.

So it is big news– one of the top non-compete stories of 2013 according to one national legal publication – when an Illinois appeals court held that two years of continued employment was necessary to be sufficient consideration to support a non-compete agreement. Any employer that does business in Illinois should at least consider this decision in its non-compete strategic decisions and discuss its impact with counsel.

In 2014 it is Indiana in the news with non-compete decisions. In March we covered an Indiana appeals court decision that was noteworthy for its refusal to apply the blue pencil doctrine, the doctrine followed by courts in some states that allows court to strike offensive language in non-competes but leave other provisions intact. The court there held that would be too involved, calling into question the viability of that doctrine in Indiana.

Late last month, an Indiana appeals court issued another decision that presents another potential hazard to enforcement. In that case the court held that a 10-day break in employment rendered the non-compete signed prior to the break unenforceable. It is not entirely surprising that a court would expect an employee who leaves and returns to an employer to sign a new non-compete upon returning, but the short duration of the break in this case is eye catching and a reminder to employers of being on high alert to get non-competes signed in a timely fashion as the particular state law would require. We will continue to watch for non-compete developments in the "I" states … and the others as well.

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