

ALERTS

Labor And Employment Law Alert - Federal Court Throws Fifield Bright Line Rule On Illinois Restrictive Covenants

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On Feb. 6, the United States District Court for the Northern District of Illinois again cast doubt on the bright line rule adopted by an Illinois appellate court regarding what constitutes sufficient consideration for a restrictive covenant.

In *Fifield v. Premier Dealer Services, Inc.*, a 2013 Illinois appellate court decision, the court created a bright line rule that initial or continued at-will employment was only sufficient consideration for post-employment restrictive covenants if the employee remained employed for two years. The *Fifield* holding sent employers scrambling to rewrite restrictive covenants and to provide additional forms of consideration to ensure that courts would not decline enforcement for lack of adequate consideration.

Until this month, only two Northern District of Illinois courts addressed the *Fifield* rule. The first case, *Montel Aetnastak v. Miessen*, rejected the holding in *Fifield*, ruling that 15 months of continued employment was sufficient consideration to support the restrictive covenant. The second case, *Instant Technology v. DeFazio*, followed *Fifield* and held that restrictive covenants were not enforceable against a group of three employees who worked 10, 19 and 21 months respectively. The *Instant Technology* case is currently on appeal at the Seventh Circuit.

The Northern District of Illinois' recent holding in *Bankers Life & Cas. Co. v. Miller*, became the second Northern District of Illinois case to reject the *Fifield* bright line rule. In *Bankers Life*, several employees resigned and left for a rival company. Bankers Life sued to enforce the employees' restrictive covenants. The employees moved to dismiss, claiming their restrictive covenants were unenforceable in light of the *Fifield* two-year rule.

Judge Manish S. Shah denied the motion to dismiss and held that the bright line rule in *Fifield* would not be adopted by the Illinois Supreme Court. Relying on the 2011 Illinois Supreme Court decision in *Reliable Fire Equip. Co. v. Arrendondo*, Judge Shah reasoned that the Illinois Supreme Court had not yet decided the issue, but that a review of the court's holdings demonstrated that such a rule would be inconsistent with prior rulings that the enforceability of a restrictive covenant should be based on the "totality of circumstances." The Illinois Supreme Court has cautioned against the creation of bright line rules instead of specific factual inquiries. As such, Judge Shah held that courts must make a case-by-case determination of whether there is adequate consideration rather than relying on a formalistic bright line rule.

This area of Illinois law is in a state of flux. Illinois state courts in the First

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District will be required to follow *Fifield* until the Illinois Supreme Court addresses this issue. As is evident by the discussion above, the federal district courts in Illinois will decide this issue on a case-by-case, judge-by-judge basis, at least until the Seventh Circuit weighs in.

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