

Pennsylvania Supreme Court strikes down no-hire provision

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Pennsylvania's highest court recently upheld a decision rendering a no-hire provision contained in a service contract between two companies unenforceable. The court found the provision was overly broad and unduly restricted fair competition among the laborers.

Background

Pittsburgh Logistics Systems, Inc. (PLS) is a third-party logistics provider that arranges for the shipping of freight, and Beemac Trucking is a shipping company. In August 2010, the two firms entered into a service contract agreement containing a no-hire provision.

The provision at issue prohibited Beemac and any of its agents or independent contractors from hiring any PLS employees during the term of the contract, plus an additional two years after the date of termination. The litigation arose after Beemac hired four PLS employees in violation of the no-hire provision, prompting the logistics provider to file suit.

Pennsylvania courts have routinely enforced (1) no-hire provisions related to the sale of a business or (2) a noncompete provision contained in an employment contract. The high court had yet to consider, however, whether a no-hire provision in a service contract was enforceable under state law.

No-hire provision overly broad, not enforceable

In a case of first impression (meaning the issue had never before been addressed by the court), the court began its analysis by conducting an extensive review of other jurisdictions' treatment of no-hire provisions. Ultimately, the court landed on the use of "a balancing test to determine the reasonableness of the restraint" (with respect to protecting PLS's interests) against "the harm to other contractual parties and the public."

Applying the balancing test, the court found the no-hire provision in the PLS agreement was overly broad and not enforceable.

The court acknowledged PLS's legitimate interest in preventing current and future "business partners from poaching [its] employees who have developed specialized knowledge and expertise in the logistics industry" through their employment with the company. It wasn't persuaded, however, by the company's position because it found the no-hire provision was broader and more restrictive than needed to protect its interests and also created "a probability of harm to the public."

Provision exceeded legitimate business interests

The court reasoned the no-hire provision was overly broad and outweighed PLS's legitimate business interests because it:

- Precluded Beemac from hiring, soliciting, or inducing *any* PLS employee;
- Failed to consider whether the trucking company ever had contact with the employees in question; and
- Lasted for a total of three years, which the court deemed excessive under the circumstances.

In essence, the court concluded PLS could achieve its legitimate interests with a less sizable restriction than the no-hire provision imposed, which "was meant to have effect in the broadest of possible terms."

No benefit in exchange for restrictions

In addition, the supreme court noted the no-hire provision impairing PLS

employees' mobility was created without their consent or any benefit accruing to them. The evidence showed:

- Without their knowledge or consent, PLS employees were unilaterally restricted from seeking employment with Beemac; and
- They received no payment or other consideration in exchange for the restriction.

As a result, the court wasn't willing to lend credence to a restriction about which the PLS employees were unaware and for which they weren't compensated. Plus, it wasn't part of their employment agreements.

Enforcement creates likelihood of harm

Finally, the court struck down the no-hire provision because it likely harmed the general public. The court opined the provision was harmful because it "undermine[d] free competition in the labor market in the shipping and logistics industry" and was likely to result in depressed wage growth.

In other words, the no-hire restriction appeared to reduce the employer's incentive to keep wages competitive because there was less fear an employee would be able leave for a higher-paying position within the same industry. *Pittsburgh Logistics Systems, Inc. v. Beemac Trucking, et. al.*

Takeaway for employers

Although the recent ruling rendered PLS's no-hire provision unenforceable, the court refrained from invalidating all no-hire provisions. Rather, its ruling demonstrates that to be enforceable, a no-hire provision must be narrowly tailored in scope (both in the nature of the employment restrictions and their duration) to match the employer's legitimate interests.

To provide better support for an underlying no-hire provision, you should consider negotiating noncompete agreements with employees in exchange for valid consideration (e.g., compensation). If you have questions about the construction or enforceability of your no-hire provision, noncompete agreement, or similar contracts, contact experienced employment counsel for assistance.

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