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May 24, 2004

Vol. 8, Issue 13

The Employer Advisory

Employment Case Analysis You Can Use

IN CASE OF FIRST IMPRESSION ILLINOIS SUPREME COURT UPHOLDS NO-HIRE PROVISION OF CONTRACT BETWEEN EMPLOYERS

James Booker was a truck driver for H&M Commercial Driver Leasing, Inc. H&M was in the business of leasing truck drivers and leased Mr. Booker to Fox Valley Containers, Inc. The contract between the employers contained a no-hire provision which forbade Fox Valley from hiring any of the leased drivers for one year from the termination date of the agreement. The agreement also contained a provision providing for \$15,000 liquidated damages if Fox Valley breached the contract. One month after signing the agreement, Fox Valley hired Booker as its own employee.

H&M filed a lawsuit claiming breach of contract. The circuit court entered judgment in favor of H&M and Fox Valley appealed. Fox Valley argued the no-hire provision was unenforceable because it restricted free trade and violated public policy. The appellate court affirmed and granted Fox Valley leave to appeal to the Illinois Supreme Court.

The Illinois Supreme Court affirmed the decision. It held the no-hire provision to be a restriction on an employer's ability to hire former employees of another employer rather than as a non-compete agreement or a restrictive covenant limiting an employee's right to contract. Having no case law from Illinois directly addressing the public policy, the Court analyzed case law from other states. The Court stated that nothing in the record suggested a shortage of truck drivers as a result of the no-hire provision, H&M employees were not precluded from working as drivers for other companies and Fox Valley was not restricted from hiring all H&M employees, only those employees that had been assigned to it. Fox Valley could hire H&M employees leased to Fox Valley if either it waited one year or paid the liquidated damages.

Employers can use non-compete agreements to restrict employees from working for competitors and no-hire provisions to restrict customers from hiring employees. Employers are also advised to discuss the length of the limitation and the amount of liquidated damages with legal counsel to determine their reasonableness.

H&M Commercial Driver Leasing, Inc. v. Fox Valley Containers, Inc., No. 96057 (Ill. S. Ct.) February 20, 2004. (KAA)

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