

Illinois Courts Continue To Apply *Fifield*; Employers Should Closely Examine Non-Competes To Ensure Enforceability

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In 2013, the Illinois Appellate Court issued a decision, ***Fifield v. Premier Dealer Servs., Inc.***, which held that the promise of at-will employment was insufficient consideration to support an otherwise enforceable non-compete agreement under Illinois law unless the employee worked a full two years after entering into the non-compete agreement. This decision represented a substantial change in Illinois law, with many attorneys and employers predicting that the decision would be reviewed and, likely, overturned by the Illinois Supreme Court. However, the Illinois Supreme Court declined to review the decision and, recently, another Illinois Appellate Court adopted *Fifield's* reasoning. The Third District Appellate Court, in ***Prairie v. Francis***, strictly applied *Fifield's* ruling and held that 19 months of continued employment, even when the employee voluntarily resigned and then sought to compete with her former employer, was not sufficient consideration to support her post-employment non-compete restrictions. In light of these decisions, when entering into new non-competes, employers should consider giving employees additional, meaningful consideration (such as a signing bonus) in exchange for the non-compete. Employers who fail to do so may find themselves in a circumstance where their employees depart and take customers to a competitor, with little legal recourse. Competitors may also feel more emboldened to actively recruit key employees who do not have enforceable non-competes. Employers should strongly consider reviewing the non-compete agreements of their key employees and ensuring that those agreements are supported by adequate consideration.

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