

Stand-Alone Non-Disclosure Agreements Could Be Subject To Increased Scrutiny

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Based on prior Illinois case law, employers must consider giving employees additional, meaningful consideration in exchange for a new or existing employee entering into a restrictive covenant/non-compete agreement. This type of additional "consideration" may include a sign-on bonus or additional, substantial paid time off. Without additional adequate consideration, these agreements may not be enforceable against former employees who terminate employment for as long as two years after having signed the agreement. Often times, non-disclosure provisions, which protect confidential and proprietary information of employers are included in non-compete agreements. Occasionally, however, employers present stand-alone non-disclosure agreements to employees. Notably, a recent federal court decision indicates that even stand-alone non-disclosure agreements may be subject to the elevated consideration requirements under Illinois law. In *Apex Physical Therapy, LLC v. Ball*, a federal district court in Illinois ruled that a stand-alone non-disclosure agreement that is not supported by additional consideration (assuming the employee has not been employed for at least two years) may be unenforceable and of no use to the employer. The Apex decision only further shows that non-compete and non-disclosure agreements are complicated, and employers must ensure that such agreements are supported by adequate consideration. This analysis involves the consideration of many factors and must be conducted on an individualized basis.

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