

Chicago Federal District Court Refuses to Apply *Fifield* Two Year Rule

Labor & Employment Law Update

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Readers of this update know that Illinois radically changed restrictive covenant law in *Fifield v. Premier Dealer Services Inc.*, 2013 IL App. (1st) 120327. In *Fifield*, the court required two years of at-will employment as consideration for a post-employment non-solicitation or non-compete clause entered into at the outset of employment, even if the employee voluntarily quit. The Illinois Supreme Court declined to review *Fifield* despite the requests of business groups and employer advocates. Since then, *Fifield* has remained controversial, with one appellate court and a few federal district courts declining to apply the two year rule. However, other courts have followed it and it has not been overruled, so employers ignore it at their peril.

In *Traffic Tech, Inc. v. Kreiter*, Case No. 14-CV-7528 (N.D. Ill. Dec. 18, 2015), the federal district court (Judge Dow) declined to grant a motion to dismiss filed on the basis of *Fifield*. The defendant employee had signed an employment agreement containing a non-solicitation clause when he joined the Plaintiff, but then he quit roughly a year later. Under the *Fifield* two year standard, the restrictive covenant should have been unenforceable. But the court denied a motion to dismiss filed on this basis, holding that "Illinois Supreme Court is not likely to adopt a two-year, bright line rule in assessing whether an employee was employed for a 'substantial period of time' so as to establish adequate consideration to support a post-employment restrictive covenant." The court noted that the last time that restrictive covenants were discussed by the Illinois Supreme Court, in *Reliable Fire Equip. Co. v. Arredondo*, 965 N.E.2d 393, 403 (Ill. 2011), the court held that the enforceability depended on a totality of the circumstances inquiry that was inconsistent with the bright line approach established by *Fifield*. This view is consistent with the opinions expressed in this blog and elsewhere that were critical of the *Fifield* decision.

Fifield remains the law of Illinois but it is under attack. We will keep you updated in this blog.