

# Employee Who Quits Rather Than Sign Non-Compete Is Entitled to Unemployment Benefits

## Labor & Employment Law Update

on May 23, 2014

The Missouri Court of Appeals for the Eastern District recently determined that an employee who refuses to sign a proffered non-compete agreement, which was required as a condition of employment, and voluntarily leaves employment was entitled to unemployment benefits. The court determined that “good cause” existed and warranted entitlement.

David Darr began working for Roberts Marketing Group in October of 2012, selling final expense life insurance. Shortly thereafter, on January 24, 2013, the employer announced that it was implementing a new non-compete agreement for all employees to sign. Among the terms, the non-compete prohibited the employees from engaging in any business competing directly or indirectly with the employer for a period of thirty-six (36) months. The geographic reach of the agreement extended to the entire United States, including Alaska and Hawaii, and all U.S. territories. It also required that the employee represent that the non-compete as written does not impose a financial hardship and does not prevent the employee from being gainfully employed. It required the employees to waive any defenses in future litigation. Finally, the non-compete contained a tolling provision that stated that should the employee breach the agreement, the non-compete would be extended an additional thirty-six (36) months from the date the employee ceased violating the terms of the non-compete.

On January 29, 2013, a company-wide meeting was held, at which time employees were permitted to ask questions. The employer required that, as a condition of employment, all employees execute the non-compete by February 1, 2013. There was no evidence that the employees were allowed to negotiate the terms of the non-compete or consult an attorney. Darr refused to sign the agreement and eventually voluntarily resigned. The Missouri Labor and Industrial Relations Commission determined that Darr had voluntarily left his employment without good cause attributable to the employer and thus denied his claim.

The appeals court reversed the commission and focused its analysis on the terms of the non-compete. The court determined that the non-compete had been presented to Darr with an ultimatum that it be signed within a very short

period of time, which hindered any meaningful review of the agreement and any counsel from an attorney. Additionally, the court determined that the agreement would also place restrictions on future employment that were not in place at the time of Darr's hire. The court noted that the terms of the non-compete were not minor or trifling and that any acceptance of the agreement would have constituted a substantial change in Darr's working conditions. As such, Darr had established "good cause" attributable to his employer for his voluntary departure.

What does this mean for employers in Missouri—and, perhaps, Illinois and other states that also allow employees to collect unemployment benefits when they voluntarily quit "with good reason attributable to the employer"? In most states, employers may impose non-competes as a condition of continued employment. However, the employer must be cognizant that if the agreement is so onerous as to detrimentally change the employee's working conditions, especially if employees have no meaningful opportunity to review the agreement prior to signing, then employees may quit (in lieu of signing) and still collect unemployment benefits. In this case, while not specifically adjudicating the enforceability of the non-compete, the court noted that this agreement might not withstand judicial scrutiny.

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