

New Case Underscores Need for Employers to Act Promptly To Enforce Restrictive Covenants

Labor & Employment Law Update

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Readers of this blog know that we counsel our employer clients to immediately investigate the facts as soon as an employee who is subject to a restrictive covenant engages in conduct that might violate it. This is because the right to obtain an emergency injunction blocking any prohibited conduct can depend on the promptness of the employer's efforts at enforcement.

This point was underscored by a recent unpublished decision of the Illinois Appellate Court for the First District (Cook County). Although this is an Illinois case, the lesson applies to employers in any state.

Defendant Meyer was senior vice president for the plaintiff bank. He signed an employment agreement that contained a six month non-compete agreement and a non-disclosure covenant. The plaintiff's request for a temporary restraining order was based on e-mails that were located in its files and which showed possible breaches occurring almost four months earlier when the employee left. The court cited this delay in bringing suit as one of the reasons it was affirming the trial court's denial of the motion for a temporary restraining order.

The lesson is that, when an employee leaves, the employer should immediately take certain steps to investigate. These include taking the employee's work station out of circulation and reviewing it to determine whether the employee has sent documents to a home e-mail account, contacted customers, or downloaded protectable information. The employee should be provided with a copy of his or her contract because often employees either forget they have one or doubt that it will be enforced. If breach is suspected, a written cease & desist/ information preservation notice should be sent to the employee and possibly the new employer. Finally, if any evidence of breach is uncovered, employers should be aware that failing to take prompt action could result in the courts denial of emergency injunctive relief.

Check back for more updates on the law related to enforcing restrictive covenants.