

Illinois Court Eases Way to Prevent Former Employees from Competing

A recent Illinois appellate court decision may make it easier to prevent former employees from competing and soliciting customers. Since a 1975 appellate court decision, Illinois has enforced competition restrictions on former employees only when they are necessary to protect a "legitimate business interest." The courts have only recognized two legitimate interests, which are the protection of "confidential information" and "near-permanent customer relationships." Although the subject of dozens of lower court decisions, the legitimate-business-interest requirement has never been expressly addressed by the Illinois Supreme Court. The result has been many seemingly inconsistent lower court decisions on what is a near-permanent relationship or confidential information. The varying standards imposed by different judges and appellate panels have made enforcement of non-competition restrictions difficult and expensive.

However, in *Sunbelt Rentals, Inc. v. Ehlers*, 4-09-0290 (4th Dist. 9/23/09), an Illinois appellate court panel rejected the legitimate-business-interest requirement entirely, holding that restrictions on competing or soliciting customers are enforceable as long as they are reasonable as to length of time and geographic (or customer) scope. The appellate panel based its ruling on a 2006 decision in which the Illinois Supreme Court cited freedom of contract principles in enforcing non-competition restrictions in physician employment contracts.

While the appellate court decision eliminates a major litigation roadblock, there is no certainty that other Illinois appellate court districts, or federal courts applying Illinois law, will follow it. That uncertainty could continue unless and until the Illinois Supreme Court expressly rules whether a legitimate business interest is required to restrict non-professional employees. The appellate court's rejection of the legitimate-business-interest requirement, however, provides a strong reason for employers to consider—and more vigorously enforce—agreements to prevent employees from becoming competitors.

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