

## Illinois Supreme Court Clarifies and Broadens Noncompete Enforceability

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A recent Illinois Supreme Court opinion clarifies and broadens the scope of enforceable noncompete agreements for Illinois employers. This newsletter summarizes the court's opinion and the resulting changes regarding the enforceability of noncompete agreements.

In its recent decision in *Reliable Fire Equipment Comp. v. Arnold Arredondo*, the Illinois Supreme Court clarified and broadened the circumstances in which noncompete agreements will be considered enforceable in Illinois. Docket No. IL 111871 (Dec. 1, 2011). The court held there is no specific test to determine whether a noncompete agreement protects an employer's legitimate business interest and is therefore enforceable; therefore, any court considering a noncompete agreement should look at the totality of the circumstances surrounding the agreement to determine whether it protects a legitimate business interest. This decision has significant implications for any business that has or will create noncompete agreements because it expands the number of interests that a business may protect through a noncompete agreement.

### Background

Before *Reliable*, Illinois courts were split on whether or not an employer must prove the noncompete agreement protected a legitimate business interest to be enforceable. Recently, the Illinois Appellate Court, Fourth District, held in *Sunbelt Rentals, Inc. v. Ehlers* that Illinois does not require a restrictive covenant protect a reasonable business interest to be enforceable. 394 Ill. App. 3d 421, 431 (2009). Instead, that court stated an agreement's reasonableness need only be based on whether it restricts competition for a reasonable amount of time over a reasonable distance. Likewise, the Illinois Appellate Court, Second District, stated in *Steam Sales Corp. v. Summers* that a court need only consider whether the enforcement will be injurious to the public or impose undue burden on the promisor, and whether the restraint imposed is greater than necessary to protect the employer. 405 Ill. App. 3d 442, 457 (2010). If it satisfied both of those requirements, it was enforceable. Therefore, both courts explicitly rejected the notion that a court must consider the business interest protected before upholding a noncompete agreement.

Other Illinois courts that did require a legitimate business interest to enforce a noncompete agreement limited what interests were protectable. For example, the Illinois Appellate Court, First District, held in

*Nationwide Advertising Service, Inc. v. Kolar* that there are only two legitimate interests that are protectable: confidential information the employee acquired through his employment and subsequently tried to use for his own benefit and an employer's near-permanent relationship with its customers when, but for the association with the employer, the former employee would never have had contact with the customers in question. 28 Ill. App. 3d 671, 673 (1975). These were the only two interests, the court held, that were protectable. Since the *Kolar* case, many Appellate Court cases embraced that decision as the standard for enforcing noncompete agreements.

### Analysis

In *Reliable*, the Illinois Supreme Court explicitly reaffirmed that all noncompete agreements *must* protect a legitimate business interest to be enforceable. The court stated all agreements are reasonable and, therefore, enforceable, *only* if they are ancillary to a valid employment relationship and are no greater than is required for the protection of a legitimate business interest of the employer, do not impose undue hardship on the employee and are not injurious to the public. The court overruled the decisions of any lower court to the extent that they "characterize [] [Illinois Supreme Court precedent] as deviating from the above-described general three-prong rule of reason ... ."

The Illinois Supreme Court then held that courts should consider the totality of the circumstances when deciding whether the employer's legitimate business interest was protectable. The court rejected the *Kolar* two-prong test and all other limiting tests for determining whether a legitimate business interest was protectable, stating "[e]ach case must be determined on its own particular facts. Reasonableness is gauged not just by some but by *all* of the circumstances." Thus, the court stated it "expressly observe[d] that appellate court precedent for the past three decades remains intact, but only as nonconclusive examples of applying the promisee's legitimate business interest, as a component of the three-prong rule of reason, and not as establishing inflexible rules beyond the general and established three-prong rule of reason." Instead of protecting only an enumerated list of interests, a court must look at the totality of the circumstances to determine whether a legitimate business interest exists. Courts can consider various factors which "include, but are not limited to, the near-permanence of customer relationships, the employee's acquisition of confidential information through his employment, and time and place restrictions." However, "[n]o factor carries any more weight than any other, but rather its importance will depend on the specific facts and circumstances of the individual case."

## Implications for Employers and Employees

*Reliable* will broaden the number and type of noncompete agreements that Illinois courts will find enforceable. Instead of upholding only those noncompete agreements that protect against specific employee actions—namely the use of confidential information gained during employment and the protection of near-permanent customer relationships—Illinois courts must now consider any number of relevant factors to determine whether there is a legitimate business interest that is being protected. If those factors all add up to a legitimate business interest, the noncompete does not impose undue hardship on the employee, and is not injurious to the public, then it should be found enforceable.

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