RESTRICTIVE COVENANTS IN EMPLOYMENT AGREEMENTS: LEGAL IMPLICATIONS OF SOCIAL MEDIA

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An issue garnering considerable attention from employment lawyers and human resource coordinators is the impact of social media on employment relationships. As social media has evolved into corporate networking and recruiting through sites like LinkedIn and Facebook, it has brought to light new issues for employers seeking to enforce restrictive covenants in employment agreements.

In *TEKsystems, Inc. v. Hammernick*, Case No. 10-cv-819, filed last year in the United States District Court for the District of Minnesota, an IT staffing firm sued its former employee for using LinkedIn to "connect" with, and allegedly solicit, its contract employees to work for a competing firm. The named defendant, Brelyn Hammernick, worked as a recruiter for TEKsystems. Her employment agreement contained non-competition, non-solicitation, and non-disclosure provisions extending for a period of eighteen months following employment.

When her employment ended, she went to work for another IT staffing firm in a similar role and used LinkedIn to "connect" with employees under contract with TEKsystems. This action was perceived by TEKsystems to violate the restrictive covenants of her employment agreement. The terms of the employment agreement, however, made no mention of social media or its use to contact employees.

This case highlights new challenges for employers in an area of law traditionally disfavored by courts. Restrictive covenants in employment agreements are closely scrutinized and narrowly construed in their application. To ensure enforceability, terms must be carefully drafted and tailored to specific facts and circumstances. This includes accounting for changes in technology, such as social media, and adapting policies, handbooks and employment agreements to address its use by employees.