

# Federal Standard for Enjoining Breach of Non-Compete Agreement Differs from Florida's, Eleventh Circuit Rules

By David M. Gobeo

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Federal courts must balance the potential harm to the former employee with the threatened injury to the party seeking to enforce a non-competition agreement when deciding whether to grant an injunction enforcing the agreement, a federal appeals court in Atlanta has ruled, possibly changing how courts evaluate restrictive covenants in employment agreements in Florida. *Transunion Risk and Alt. Data Solutions, Inc. v. MacLachlan*, No. 15-10985 (11th Cir. Aug. 27, 2015) (unpublished). Florida courts are expressly prohibited by the state's non-compete statute (Florida Statute § 542.335(1)(g)1) from considering the hardship that might be caused to the person against whom enforcement is sought.

The appeals court agreed with the district court's decision to presume irreparable harm for the violation of a non-compete agreement. The Court found that Federal Rule of Civil Procedure 65 ("Rule 65") was consistent with the state law that creates a presumption of irreparable harm (Florida Statute § 542.335(1)(j)), noting that the former employer had established a rebuttable presumption of irreparable harm and that the former employee did not provide sufficient evidence to rebut this conclusion.

However, the appellate court found that Florida Statute § 542.335(1)(g)1 governs the *enforceability* of restrictive covenants, and not the *enforcement* of an already enforceable restrictive covenant controlled by Rule 65. Because federal courts sitting in diversity jurisdiction (where state law claims may be in issue, but a federal court can decide the case because the parties are from different states) apply federal procedural law to the exclusion of any contrary state procedure, the Eleventh Circuit held that the requirement to balance the harms under Rule 65 controlled.

When deciding whether to enforce non-competes in federal or state court, companies should keep in mind that a federal court sitting in diversity jurisdiction must consider the harm of enjoining a former employee against the potential harm to the former employer because of the breach of the non-compete. Florida state courts, however, are prohibited from considering the harm to an enjoined individual.

Jackson Lewis attorneys are available to answer inquiries regarding this and other workplace developments.

Meet the Author



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