

Illinois Supreme Court's Refusal to Review Restrictive Covenant Decision Leaves Employers with Uncertainty

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The Illinois Supreme Court's recent refusal to review the Illinois Appellate Court's controversial decision in *Fifield v. Premier Dealer Services, Inc.*, No. 1-12-0327, 2013 IL App (1st) 120327 (Jun. 24, 2013) leaves employers with uncertainty about the appropriate consideration to support employee restrictive covenant agreements at hire.

***Fifield*, redux**

As detailed in our [July 15, 2013 issue](#) of the *Illinois eAuthority*, in *Fifield* the Illinois Appellate Court deviated from the long-standing majority position that if an employee signs a post-employment restrictive covenant at the outset of his or her employment, the job itself is sufficient consideration for the agreement to be enforced. The *Fifield* court held that two years of continued employment is "required" under Illinois law for an employer to enforce a post-employment restrictive covenant, regardless of when the employee signed the agreement. Thus, for example, a new hire required to sign a restrictive covenant at the start of employment and offered nothing more as consideration for signing that covenant, must be employed for two years in order for his or her employer to enforce that covenant. Prior to *Fifield*, this continued employment doctrine had only been applied when the employer sprang an agreement on employees during the employment relationship.

Although many believed that the Illinois Supreme Court would overturn *Fifield's* two-year employment mandate at hire—and the Illinois Chamber of Commerce went as far as to seek the Illinois Supreme Court's permission to file an amicus brief explaining how the *Fifield* decision harmed Illinois businesses—the court denied the petition for leave to appeal. This decision is now precedent in a large part of Illinois and may be adopted by the other appellate districts in Illinois as well.

Advice for Employers

The Illinois Supreme Court's decision not to review *Fifield* confirms that the landscape has changed for employers that want to enforce post-employment restrictive covenants. It is imperative that employers provide additional consideration—such as signing bonuses or enhanced employee benefit packages—to any employee asked to sign a post-employment restrictive covenant agreement or any current employee who has signed such an agreement within the last two years. Employers that do not do so risk falling prey to an employee leaving his or her employment before the two-year threshold is met and nullifying any restrictive covenants.

Additional Information

Should you have any questions about this case or its impact on your workplace, please contact the authors, the Ogletree Deakins attorney with whom you normally work, or the Client Services Department at clientservices@ogletreedeakins.com.

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