

Client Briefing

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Ohio Supreme Court Gives Employers More Flexibility To Require Existing Employees To Sign Noncompetition Agreements

By Randal G. Ammons

On March 10, the Ohio Supreme Court provided Ohio employers with good news. In *Lake Land Employment Group of Akron v. Columer*, the Court held that an employer may require its at-will employees to sign noncompetition agreements and that the agreements will be binding simply because the employee was allowed to continue his or her employment.

Previously, Ohio appellate courts were split as to whether continued employment was sufficient consideration to make noncompetition agreements binding if entered into after the commencement of the employment relationship. Some appellate courts held that continued employment was sufficient consideration, while others held that current employees who signed noncompetition agreements had to receive additional consideration — usually extra compensation — to make such an agreement binding.

Lee Columer was an at-will employee at Lake Land from 1988 through 2001. He signed a noncompetition agreement in 1991, but received nothing in exchange for signing the agreement other than he continued his employment with Lake Land. After Columer opened a competing business, Lake Land filed suit to enforce the noncompetition

agreement. Columer asserted that the noncompetition agreement was unenforceable because Lake Land did not provide Columer with additional consideration in exchange for Columer's execution of the agreement. The trial and appellate courts agreed with Columer.

The Ohio Supreme Court (in a 4-3 decision) held that at-will employees who sign otherwise valid noncompetition agreements are bound by the agreements even if they receive nothing for signing the agreements other than getting to keep their current position. The Court stated that an employer's presentation of a noncompetition agreement to an at-will employee is a "proposal to renegotiate the terms of the parties' at-will employment." In effect, the at-will employee signs the agreement in exchange for the employer's refraining from exercising its right to terminate the employee.

Ohio employers may now require their at-will employees to sign noncompetition agreements without the concern of providing consideration beyond continued employment to make the agreement enforceable. Although this is a positive decision for Ohio employers, employers should still be cautious in their use of noncompetition agreements because several other issues remain.

First, this decision only affects employment situations governed by Ohio law. The law in other states varies widely.

Second, Ohio courts will only enforce "reasonable" noncompetition agreements. Specifically, the agreements are enforced only when the geographic scope they purport to cover is reasonable. The same goes for the duration of the agreements.

Third, "reasonable" geographic scope and duration varies from industry to industry and from position to position within those industries. The useful life of the employer's confidential information is also a factor in determining the "reasonableness" of the agreement.

Finally, the courts will only permit restrictions on an employee's "competitive" activities where the restrictions reasonably protect the former employer's business from unfair competition and without

unnecessarily restricting the employee's ability to earn a living.

What You Need To Know

Employers should consult their attorneys for advice concerning the enforceability of a noncompetition agreement prior to requiring an employee sign the agreement. Employers should not treat noncompetition agreements as one-size-fits-all contracts. These agreements should be narrowly tailored to meet an employer's specific needs. At least now, "sufficient consideration" provided to an at-will employee in exchange for signing the agreement is no longer an issue.

If you need more information or would like assistance in preparing noncompetition agreements, please contact Randal Ammons or any member of our Employment Law Group at 216-781-1212.

For information on this or other employment issues, please contact one of our Employment Law attorneys:

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The information in this newsletter is a summary of often complex legal issues and may not cover all the "fine points" related to a specific situation or court jurisdiction. Accordingly, it is not intended to be legal advice, which should always be obtained in consultation with an attorney.

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