

## Enforceability of Non-Competes Limited by Illinois Court Decision

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Illinois non-compete agreements are unenforceable absent consideration (i.e. payment) in addition to the employee's hiring or retention for continuing employment, under the Appellate Court's decision in *Fifield v. Premier Dealer Services*.

In *Fifield*, the court extended an earlier ruling that if the employer's only consideration for the non-compete agreement is "continuing at will employment," the agreement is unenforceable unless the employment has lasted at least two years. The *Fifield* court rejected arguments that either the agreement to hire the employee or the provision of a one-year limited just cause protection was sufficient consideration to support an agreement, even when the employee quit after three months of employment.

To secure their customer base, protect their competitive position and retain their workforce, employers will need to provide sufficient, tangible consideration for non-compete and non-solicitation promises. Otherwise, expect to see an increase in newer employees being pursued by competitors. Although employers may still be protected by common law confidentiality and trade secret restrictions, those theories are harder to prove and less restrictive on the departing employee's activities. If existing employment agreements are unenforceable under this ruling, employers should take immediate action to provide sufficient consideration for new binding agreements with their employees.

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