

Focus on Restrictive Covenants and Trade Secrets

Illinois Supreme Court's Decision in *Reliable Fire* Broadens Enforceability of Restrictive Covenants

Many clients who deal regularly with employee restrictive covenants have eagerly awaited the Illinois Supreme Court's decision in *Reliable Fire Equipment Co. v. Arredondo et al.* The court was faced with answering the question of whether employers seeking to enforce restrictive covenants must show a legitimate business interest—in, for example, customer relationships and/or confidential information—in addition to demonstrating the reasonableness of the time, territory and activity restraints. There has been disagreement recently among the Illinois appellate courts as to whether a protectable interest need be shown at all, a position which, if adopted by the supreme court, would significantly alter how restrictive covenants are written and enforced in Illinois.

On December 1, 2011, the court issued its decision in *Reliable Fire* (2011 IL 111871) and clarified the analytical framework under which Illinois courts should examine the enforceability of restrictive covenants. The court held that employers *must* demonstrate a legitimate business interest, and held further that whether such interest exists “is based on the totality of the facts and circumstances of the individual case.” The court further held that various factors should be considered in this analysis, including, but not limited to, the near-permanence of customer relationships, the employee's acquisition of confidential information through the employment relationship, and time and place limitations. None of these factors, the court held, is generally more important or carries more weight than any other, but rather the weight to be afforded each will depend on the specific facts and circumstances of each individual case.

The court's announcement of the applicable framework does not provide clarification with respect to how restrictive covenants should be drafted or greater predictability as to when they will be enforced. Instead, the totality-of-circumstances test makes it evident that each covenant will rise or fall based on

the facts of each individual case. Further, as the court indicated, while appellate court precedent over the past three decades remains intact, that precedent only provides “nonconclusive examples of applying the promisee's legitimate business interest, as a component of the three-prong rule of reason” That three-part test will require the lower courts in Illinois to determine, based on the facts of each case, whether (1) the restraint in question is necessary to protect a legitimate interest of the employer; (2) the restraint imposes a hardship on the employee or the public; and (3) the extent or scope of the restraint is otherwise reasonable.

In practical terms, the supreme court's decision will make it more difficult for the lower courts in Illinois to decide, on a motion to dismiss, that a covenant is facially overbroad and unenforceable. Rather, courts will be inclined to allow restrictive covenant cases to proceed to the discovery, preliminary injunction and trial stages so that a full (or fuller) examination of the facts of each case can be made. Of course, whether this outcome can be considered more favorable to employers or employees will, likewise, depend on the facts and circumstances of each situation. Most of our practitioners agree that the *Reliable Fire* decision will at least initially lead to an increase in litigation involving noncompetition covenants, and may also prompt a renewed push for the Illinois legislature to intervene to enact a statute governing the permissible scope of noncompetition agreements in Illinois.

The law in this area is constantly evolving, including on a state-by-state basis. We regularly counsel clients on these matters and represent clients in restrictive covenant and trade secrets matters throughout the country. If you have any questions about this report or our practice in this area, please contact any one of the lawyers listed below or any other Vedder Price attorney with whom you've worked. ■

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Restrictive Covenants, Trade Secrets and Unfair Competition Group

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