

Pennsylvania Superior Court Finds Contractual No-Hire Agreements Between Businesses Void Against Public Policy

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The hiring of your key employees by another business that you have a relationship with — either individually or *en masse* — can be devastating. It is therefore not uncommon for businesses to insert provisions in contracts between them to prevent one company from poaching the employees of the other. The Pennsylvania Superior Court recently held, however, that such “no hire” agreements are void against public policy since they impose *de facto* non-competition restrictions on employees who otherwise would have no barrier to switching employers in the same field. In essence, such restrictions on hiring your contractual partner’s employees have been found to be unenforceable.

In *Pittsburgh Logistics Services. vs. BeeMac Trucking, LLC*, 2019 Pa.Super. LEXIS 36 (Jan. 11, 2019), Pittsburgh Logistics Systems (“PLS”) had a contract with BeeMac Trucking, LLC (“BeeMac”) to provide shipping services for PLS’ customers. In connection with their arrangement, PLS had BeeMac execute a Motor Carriage Services Contract (“MCSC”) which contained a “no-hire provision” barring BeeMac from hiring, or soliciting for hire, any PLS employees for the duration of the contract and for two years after its termination. While the contract was in force, BeeMac hired four employees of PLS, and PLS filed suit alleging a breach of the no-hire agreement and seeking an injunction barring BeeMac from employing the former PLS employees. The trial court refused to enter an injunction and the case was appealed to the Pennsylvania Superior Court.

In a first of its kind decision by a Pennsylvania appellate court, the Superior Court affirmed the trial court’s refusal to enforce the no-hire provision of the MCMS, calling it an “unfair restraint on trade” by effectively “forcing a non-compete agreement on employees of companies without their consent, or even their knowledge....” It further noted that such agreements prevent “non-signatories,” i.e. employees, from “exploring work opportunities in a similar business” without being provided with additional consideration for such a restriction. The Superior Court noted that employer/employee non-competition agreements, when necessary and when supported by adequate consideration, remain a valid tool which can be used by employers to protect their business interests. However, the use of a back-door non-compete agreement, such as the one between BeeMac and PLS, will not be permitted.

It should be noted that two judges of the Superior Court dissented from the majority opinion and would have upheld the validity of the no-hire provision in the MCMS. Moreover, such no-hire provisions are considered valid and enforceable in other states, and have been found enforceable by federal courts within Pennsylvania. See *GeoDecisions vs. Data Transfer Solutions, LLC*, 2010 U.S. Dist. LEXIS 128283 (M.D. Pa. December 3, 2010).

Businesses should be cautious before making wholesale changes to their contracts given the fact that the law on this issue is far from settled. Nevertheless, you should be aware that a no-hire provision that once protected your business may no longer be effective.

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