

Your “No-Hire” May Get Struck Down - Get Your Non-Competes In Order

We frequently inform you about the enforceability of noncompete and nonsolicitation agreements between employers and their employees. A recent case in the Pennsylvania Superior Court offers a glimpse into another less-discussed type of agreement that can affect employers and employees: no-hire agreements.

Generally, a no-hire agreement prevents Company A from hiring an employee of Company B for the period set forth in the agreement. In *Pittsburgh Logistics Systems v. BeeMac Trucking*, --A.3d--, 2019 WL 168477 (Pa. Super. Ct. Jan. 11, 2019), the Pennsylvania Superior Court held, in a case of first impression in Pennsylvania, that a no-hire provision in a commercial contract between two businesses will not be upheld because they limit employees' job opportunities and thus violate public policy.

In the case, a third-party logistics provider contracted with a shipper. The contract contained a standard non-solicitation agreement. It also prohibited the shipper “from directly or indirectly hiring, soliciting for employment, inducing or attempting to induce, any employee of [the logistics provider] or any of its affiliates to leave their employment with [the logistics provider] or the affiliate.” *Id.* at *1. While the agreement was still in effect, four of the logistics provider's employees began to work for the shipper, and the logistics provider sued for an injunction.

The Superior Court affirmed the trial court's determination that the no-hire agreement was unenforceable because no-hire agreements between businesses impermissibly prevent employees from seeking jobs at certain companies without providing the employees with any consideration or seeking their consent. Employers are still permitted to enter into non-solicitation and non-compete agreements with their employees. However, employers cannot rely on a no-hire agreement with another employer to restrict their employees' ability to seek another job. The Court did leave open the possibility that a more narrowly tailored no-hire agreement may still survive.

If you use no-hire agreements in your contracts with other businesses, you should take steps now to protect yourself. Consider implementing non-compete and non-solicitation agreements with your employees, as well as non-solicitation agreements with other businesses.

Our [Trade Secret Protection and Non-Compete Practice Group](#) follows developments in the law and can provide you with up-to-date advice for how you can protect your confidential business information. If you have questions, feel free to call [Thomas A. Muccifori](#), chair, at (856) 354-3056 or any member of Archer's Trade Secret Protection Group in Haddonfield, N.J., at (856) 795-2121, in Princeton, N.J., at (609) 580-3700, in Hackensack, N.J., at (201) 342-6000, in Philadelphia, Pa., at (215) 963-3300, or in Wilmington, Del., at (302) 777-4350.

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