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Layoff vs. Furlough: The Implications of COVID-19 on Noncompete Agreements

Client Advisories

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Since March, the COVID-19 pandemic has affected us all in almost every aspect of our lives. Six months out, lawsuits involving COVID-19 are beginning to work their way through the courts. One such case recently caught our attention, as it touches on trade secrets and noncompete agreements ("NCAs").

Schuylkill Valley Sports, Inc. v. Corporate Images Company, 2020 WL 3167636 (E.D. Pa. June 15, 2020), involved two companies that provide spirit wear to schools. Unfortunately, this industry, like so many others, sustained massive losses as a result of COVID-19. In March, the plaintiff instituted a company-wide layoff. The notice it sent to its employees said they could collect unemployment, and that their health benefits would run through April. The plaintiff said it would determine before the end of April whether it would continue to pay for the benefits, or whether the employees had to enroll in COBRA. Later, the plaintiff informed them that, while it wanted to bring everyone back, it could make no guarantees.

The plaintiff's employees had all signed similar NCAs. The NCA in this case had a provision indicating that it applied if the employee resigns or is terminated for "just cause." Conversely, the NCA said it did not apply if the employee's position is eliminated or the employer goes out of business.

In April, one of the laid-off employees, a defendant in the case, went to work for a competitor, also a defendant. He emailed several other former employees who had also been laid off and solicited them to work with his new employer. The plaintiff sued on the ground that this action violated the NCA, which prohibited, among other things, the solicitation of company employees. When the new employer learned of the lawsuit, it instructed its employees not to take any actions or make any communications on its behalf.

The main issue in the case was whether the employees were terminated or furloughed. If the employees were terminated, as the defendants argued, then, by its very terms, the NCA would not apply. The court agreed with the defendants and found that the former employees had been terminated, and thus the NCAs were inapplicable. Specifically, the court found that the former employees did not resign, and they were not terminated for "just cause." The letter sent by the plaintiff announcing the company-wide layoffs was

unambiguous, the plaintiff offered no end-date for the layoff or guarantee of future employment, and thus the former employees had no reasonable expectation that they would be able to return to work.

The result of this case turned on a straightforward interpretation of the NCA's language. This goes to show, once again, that all of the words in contracts matter. For that reason, extra care should go into the drafting of such language. Although it would be unlikely that the drafters of the NCA in this case could have envisioned something like COVID-19 and the havoc it has and continues to bring to the economy and our lives, it pays to invest some time in the beginning thinking through scenarios and ensuring that contractual language protects your interests. If you already have NCAs with your employees, consider having them reviewed by counsel to see whether any language should change to protect against future events.

If you have any questions about the language in your NCAs, or about trade secrets in general, please contact Group Chair Thomas A. Muccifori at 856-354-3056 or tmuccifori@archerlaw.com, Anthony M. Fassano at 856-616-2618 or afassano@archerlaw.com, or any member of Archer's Trade Secret Protection and Non-Compete Group in Haddonfield, NJ at 856-795-2121, Hackensack, NJ at 201-342-6000, or Philadelphia, PA at 215-963-3300.

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