

Pennsylvania Supreme Court Invalidates No-Hire Provision in Service Contract

Article By:

Daniel P. O'Meara

Vik C. Jaitly

The Supreme Court of Pennsylvania recently held unenforceable a no-hire provision in a service contract between a logistics company and a trucking firm. In [*Pittsburgh Logistics Systems, Inc. v. Beemac Trucking LLC, et. al.*](#), the court reasoned that the no-hire provision at issue was overly broad and undermined fair competition for employees in the shipping and logistics industry.

Background

The case was between Pittsburgh Logistics Systems, Inc. (PLS), “a third-party logistics provider that arranges for the shipping of its customers’ freight with selected trucking companies,” and Beemac Trucking, LLC, one of the trucking companies it used. The two companies had entered into an agreement that prohibited Beemac from hiring any PLS employees. Beemac nonetheless hired four of PLS’s employees in violation of the no-hire provision.

The Supreme Court of Pennsylvania’s Analysis

Following an extensive review of other jurisdictions’ treatment of no-hire provisions, the Supreme Court of Pennsylvania utilized “a balancing test to determine the reasonableness of the restraint,” weighing PLS’s legitimate interests, against “the harm to other contractual parties and the public.” The court acknowledged that “PLS had a legitimate interest in preventing its business partners from poaching its employees, who had developed specialized knowledge and expertise in the logistics industry during their [employment] at PLS.” However, the court ultimately concluded that “the no-hire provision was both greater than needed to protect PLS’s interest and create[d] a probability of harm to the public.” The court explained that the provision was “overbroad because it preclude[d] Beemac ... from hiring, soliciting, or inducing *any* PLS employee,” regardless of whether Beemac ever had contact with that employee, and the provision lasted for the one-year term of the commercial contract plus two years thereafter. (Emphasis added.)

Significantly, the court emphasized that the no-hire provision created a likelihood of harm to PLS employees because the no-hire provision “impair[ed] the employment opportunities and job mobility of PLS employees, who [were] not parties to the contract, without their knowledge or consent and

without providing consideration in exchange for this impairment.”

Key Takeaways

The Pennsylvania Supreme Court relied on some aspects of the agreement that are case-specific, and therefore left the door open on the enforceability of other no-hire provisions in commercial agreements. However the court's application of the balancing test and other aspects of the court's reasoning have general applicability that potentially can be used to invalidate a no-hire provision within an otherwise legitimate commercial agreement between two businesses.

The Pennsylvania court's ruling does not limit the enforceability of agreement provisions in a legitimate commercial agreement between two businesses that prohibit the *solicitation* of employees, as opposed to their hire.

The court's ruling also does not limit the enforceability of no-hire provisions in agreements concerning the sale of a business, and perhaps even as to the potential sale of a business that is not consummated.

The court's ruling does not limit the enforceability of restrictive covenants between employers and employees. In fact, the court appeared to encourage employers to protect their legitimate interests through employer-employee agreements, which would be subject to the well-established standards applicable to such agreements.

The Supreme Court of Pennsylvania's ruling does not limit the enforceability of no-hire provisions in agreements that settle disputes between two businesses concerning the alleged misappropriation of trade secrets or other unfair competition.

Finally, the court's ruling does not affect the enforceability of “naked no-poach agreements.” That term is typically used to describe companies' agreements not to hire one another's employees that are not part of a legitimate commercial relationship or the sale of a business. Naked no-poach agreements are even less likely to be enforced than the type of agreement at issue in this case, and have been subject to antitrust litigation.

Going forward, businesses entering into commercial agreements with no-hire provisions may want to review the provisions to ensure that they are no broader than necessary. Businesses may also want to look for alternative methods to secure the same business interests without reliance on the enforcement of business-to-business no-hire agreements.

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