

Non-Competes: No More Blue Penciling in Wyoming

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The Wyoming Supreme Court recently made an important change to the way restrictive covenant agreements are evaluated by courts in that state. For many years, courts in Wyoming – as in many other states – have followed the so-called “blue pencil” rule when presented with a non-competition or non-solicitation agreement whose restrictions appear to be unreasonable.

Roughly speaking, when asked to enforce an overbroad restrictive covenant in an agreement, a court can (a) refuse and invalidate the whole agreement, (b) cross-out just the offending terms and enforce the rest of the agreement, or (c) modify or revise the offending terms such that they impose a more reasonable restriction. Technically, the “blue pencil” rule refers to option (b) – *i.e.*, just striking out the unenforceable terms – but option (c) also is commonly referred to as “blue penciling” the agreement. Wyoming courts used to be willing to modify overbroad restrictions and partially enforce them in modified form.

In a February 25, 2022 decision in *Hassler v. Circle C Resources*, however, the Wyoming Supreme Court overruled such precedent, noting that public policy and “established black letter rules of contract interpretation” required that courts reject employers’ requests to revise non-compete provisions that would otherwise be unreasonable and unenforceable. In that case, the employer sought to enforce against its former employee a 24 month non-compete “in any geographic area in which [the] employer markets or has marketed its services” during the employee’s final year of employment. A lower court had modified that restriction to 12 months and just two counties, and enforced it in that form. The Supreme Court overruled and, noting that the blue pencil “rule places an unfair burden on employees and creates uncertainty in business relationships,” found the non-compete provision to be void and violating public policy.

Employers with employees in Wyoming should take note and scrutinize the terms of their existing restrictive covenant agreements. If such terms overreach or extend in scope beyond what is reasonable to protect the employer’s legitimate business interests, they likely will be invalidated in Wyoming courts going forward. Given this no-blue-penciling position staked out by the Wyoming Supreme Court, it appears that even a provision in the agreement intending to authorize a court to modify the terms of a restrictive covenant in order to make them more reasonable may not be enforceable.

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