

LEGAL UPDATES

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Service

Labor & Employment

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Wisconsin Court Rules Employer's Nonsolicitation Provision Is Not Enforceable

The Wisconsin Court of Appeals reversed a circuit court decision and ruled for the first time that Wisconsin Statute § 103.465, which governs the enforceability of employment-related restrictive covenants, applies to nonsolicitation of employee (“NSE”) provisions.

In this case, an employee of the Manitowoc Company, Inc. entered into an agreement with the company that prohibited him from, among other things, soliciting “any employee” to leave the company or accept work for “any competitor, supplier or customer of Manitowoc.” After leaving the company to work for a competitor, Manitowoc claimed the former employee breached the NSE provision by recruiting Manitowoc employees to leave the company and join him. Manitowoc sued and was granted summary judgment and awarded attorneys’ fees.

The lower court’s judgment was reversed by the appeals court after concluding that the NSE provision does not comport with the stringent requirements of Wis. Stat. § 103.465, which requires that a restrictive covenant be necessary for the protection of the employer, provide a reasonable time and territorial limit, not be oppressive as to the employee, and not be contrary to public policy.

The court concluded that a blanket prohibition against solicitation of “any employee,” irrespective of that individual’s position in the company and/or extent of interaction with the former employee, was overbroad and unenforceable. Likewise, the court noted that the prohibition against solicitation of employees to merely quit their employment or work for “any competitor, supplier or customer” of the company was overbroad in that it was not narrowly defined to solicitation of employment with direct competitors.

What This Means to You

Employers should be aware that NSE provisions in agreements with employees must now comply with the rigorous requirements of § 103.465. The issue of whether § 103.465 applies to NSE provisions has not been previously addressed in Wisconsin, and for that reason many NSE provisions may not be drafted in compliance with its strict standards. Employers should review NSE agreements they have with employees and consult with legal counsel to ensure they are enforceable under the new guidance.

Contact Us

For more information on the court ruling or on NSE provisions in general, please contact a member of Husch Blackwell's Labor & Employment team.