

Pa. Supreme Court Takes on Timing of Non-Compete Agreements

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A recent case in front of the Pennsylvania Supreme Court has clarified some timing parameters of non-compete agreements.

For a non-compete agreement to be binding, three standards must be met. The non-compete must be:

- Supported by adequate consideration
- Reasonable in time and geographic scope
- Necessary to protect an employer's legitimate business interest

An employee starting employment is considered adequate consideration. However, in some situations an employee may not sign a written non-compete agreement on or before the first day of work. In the recent case [*Rullex Co. v. Tel-Stream*](#) that addressed this, the Pennsylvania Supreme Court clarified the timing issue. The court held that an employee does not need to sign a non-compete agreement "precisely (or before) the first day of employment," but there does need to be a "meeting of the minds" between the two sides on the terms of the non-compete agreement.

Non-compete agreements are enforceable absent fresh consideration, according to the ruling, "where the parties contemplated and intended that, incident to the employment relationship, the employee would be bound by its substantive terms - and the employee ultimately signed it shortly after the first day. This is in contrast with circumstances where a non-compete agreement is imposed on an employee essentially as a belated addition to the employment relationship."

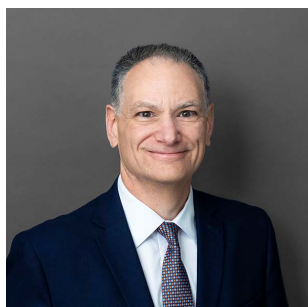
In the *Rullex* case, the employee signed a non-compete agreement at least two months after he started working for the company. The employer argued there was a meeting of the minds at the time the employee started working and thus there was consideration to support the non-compete agreement. The court disagreed, finding there was no meeting of the minds between the parties because when the employer gave the agreement to the employee, the employer gave the employee an opportunity to take it home and review it, hire a lawyer to review it and propose any changes to the employer. The court ruled that while it shows effort from the employer, it was not a true "meeting of the minds."

To avoid any issues with consideration, the best practice continues to be to have a non-compete agreement signed on or before the first day of employment. To avoid any potential problems with having an employee sign a non-compete agreement on or before the first day of employment, it is recommended that an employer

include the substantive terms of the non-compete agreement in an offer letter that would then be signed by the prospective employee.

If you have any questions regarding non-compete agreements, please [contact me](#) or any member of the [Barley Snyder Employment Practice Group](#).

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