

Pennsylvania Supreme Court Bars No-Hire Agreements

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You may have seen "no-hire" or "no-poach" agreements - provisions barring your company from hiring away the employees of your contractor or vice versa - in your vendor contracts or service agreements and wondered whether they are valid.

The Pennsylvania Supreme Court recently answered that question with a "no," declaring the provisions unenforceable and setting the stage for employers across the state to examine their vendor and service contracts.

The case originated with a dispute between Pittsburgh Logistics Systems, Inc. (PLS), a third-party logistics provider that arranges shipping of its customers' freight with selected trucking companies, and Beemac Trucking, a shipping company that conducts nonexclusive business with PLS. The motor carriage service contract between the companies contained this provision:

CARRIER [Beemac] agrees that, during the term of this Contract and for a period of two (2) years after the termination of this Contract, neither CARRIER nor any of its employees, agents, independent contractors or other persons performing services for or on behalf of CARRIER in connection with CARRIER'S obligations under this Contract will, directly or indirectly, hire, solicit for employment, induce or attempt to induce any employees of PLS or any of its Affiliates to leave their employment with PLS or any Affiliate for any reason.

During the contract, Beemac hired away four employees of PLC, and PLC filed litigation seeking, among other damages, to enforce the no-hire provision.

PLS argued that the "no-hire" provision was ancillary to a valid service agreement with Beemac, and that it "has a legitimate business interest in protecting its employee assets [from] poaching by its business partners." PLS also noted that the no-hire provision is narrowly drawn, because it only precludes employees from working for Beemac, and they are not barred from employment with any other entity in the trucking/logistics field. Beemac, on the other hand, argued that the "no-hire" provision violates public policy, and it allows PLS "to contract away the rights of its employees by way of contracts to which they are not parties and for which they receive no consideration."

In a matter of first impression in Pennsylvania, the state's highest court sided with Beemac and the employees. The court held that the no-hire provision is an unenforceable restraint of trade against public policy. It "impairs the employment opportunities and job mobility of PLS employees, who are not parties to the contract, without their knowledge or consent and without providing consideration in exchange for this impairment."

The Pennsylvania Supreme Court's decision reflects a broader opposition to employee "no-hire" restrictions

by the U.S. Department of Labor and Pennsylvania's Attorney General Josh Shapiro, who argued against their enforcement in restaurant franchise agreements.

Employers in Pennsylvania should now review their contracts and service agreements for similar "no-hire" language, and consider revising those provisions in favor of more narrowly drawn restrictive covenant agreements with select employees on a case-by-case basis. Attorneys in [Barley Snyder's Employment Practice Group](#) can assist companies with assessing and where appropriate, drafting such agreements.

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