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Washington Supreme Court Strikes Down Noncompete Agreement

Noncompete contracts signed after employment might be invalid

Businesses should promptly conduct a review of their existing noncompete agreements in light of a new ruling by the Washington Supreme Court in *Labriola v Pollard Group, Inc.*

Facts of the Case

In 1997, Pollard Group, Inc. employed Anthony Labriola to work as a commercial print sales person, and the parties entered into an employment agreement. The agreement contained a restrictive covenant not to compete in the custom printing business for a period of three years after employment ended. The agreement didn't specify the geographic scope of the noncompete.

In April of 2002, Labriola signed another noncompete agreement at the employer's request. This time the noncompete specified a geographic scope of 75 miles of the employer's business in Tacoma. Labriola remained an "at will" employee and received no additional benefits. Pollard Group incurred no additional obligations from the noncompete agreement.

In November 2002, Pollard Group terminated Labriola when it discovered that Labriola intended to seek employment with a competitor. Pollard Group also sent a letter to the competitor stating its intent to enforce the 2002 noncompete agreement. The competitor did not hire Labriola, and Labriola filed suit against Pollard Group.

Labriola argued that his 2002 noncompete was invalid because Pollard Group failed to give adequate consideration for Labriola's promises not to compete. The Supreme Court agreed. The Court stated that the general rule is that adequate consideration exists if the employee enters into a noncompete agreement when he or she is first hired. However, a noncompete entered into *after* employment will be enforced only if it is supported by independent consideration. The Court said that adequate consideration may include increased wages, a promotion, a bonus, a fixed term of employment or perhaps access to protected information. The Court found no such consideration here.

Pollard Group contended that it did give adequate consideration because it continued to employ and train Labriola after he signed the noncompete. The Court disagreed. It said that Pollard Group promised Labriola nothing in the way of future employment, training or any other benefit, and Labriola remained an "at will" employee. The Court entered a summary judgment in favor of Labriola that the 2002 noncompete was not validly formed.

Implications for Businesses

Businesses should take the following precautions:

Review every noncompete agreement that was signed after the employee was hired. See if the agreement recites employer consideration such as increased wages, a promotion, a bonus, a fixed term of employment or perhaps access

to protected information. Also, verify that the employer actually gave the recited consideration to the employee. Consult legal counsel if either of these factors is absent or you are uncertain about it.

If possible, all future noncompete agreements should be signed when the employee is first hired. If you must get a noncompete agreement from an existing employee, be sure to give the employee adequate consideration for the agreement and be sure that the agreement recites the consideration given.

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