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Illinois Appellate Court Refuses to Enforce Restrictive Agreement

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Recently an Illinois Appellate Court found that an employment agreement which restricted the ability of the employee to solicit customers of the employer post-employment, was not enforceable due to a lack of adequate consideration even though it was signed at the time the employee was hired. In that case, the company required newly hired employees to sign a non-solicitation agreement in exchange for employment. The agreement prohibited employees from soliciting, diverting, accepting or servicing customers for a two-year period following termination. An employee that signed the agreement decided to voluntarily resign seven months later and join a competing company. Her former employer filed suit against her for violating the restrictive covenant. The Court held that such a short period of time of continued employment is not sufficient consideration under Illinois law to support the restrictive covenant. The Court also held that even though the employee resigned but was not terminated was irrelevant in determining enforcement. Due to the departure from accepted Illinois law, the dissenting opinion stated that the Illinois Supreme Court has made it clear that continued employment is adequate consideration sufficient to make a restrictive covenant enforceable and as such, the dissenting judges thought that seven months of continued employment was sufficient consideration to support the restrictive agreement. Accordingly, under this majority analysis some consideration other than continued employment would be required by the employer to ensure the enforcement of a non-compete or non-solicitation agreement. For additional employment information, please visit our web site at www.joettedoran.com .

**This article is not intended as legal advice. You should consult with an attorney for individual advice regarding your own situation.*

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