JANUARY 26, 2018

UPDATE: WISCONSIN SUPREME COURT TREATS NON-SOLICITATION OF EMPLOYEES CLAUSE AS A RESTRICTIVE COVENANT

On January 19, 2018, in *Manitowoc Co., Inc. v. Lanning*, the Wisconsin Supreme Court ruled that a non-solicitation of employees ("NSE") clause in an employment contract was covered by the state's statute limiting the enforceability of covenants not to compete between employers and their employees. The court upheld a lower court decision, which Hall Render summarized here, and held that this employer could not rely on its NSE provision to prevent a former employee from soliciting its employees. The court's decision relied heavily on the fact that the NSE provision at issue was drafted very broadly; it prevented the former employee from soliciting any of the company's 13,000 employees on behalf of any competitor, supplier or customer of the company.

PRACTICAL TAKEAWAYS

This decision brings NSE provisions under Wisconsin's restrictive covenant statute. Wisconsin law provides that if any part of a restrictive covenant, including an NSE, is unreasonable, the whole provision is void and unenforceable. While the employer in this case was unable to enforce its restrictive covenant, the court's ruling does not render all such agreements unenforceable. Companies doing business in Wisconsin should take care to draft NSE provisions that are reasonable in terms of time, area and restricted conduct.

For more information on restrictive covenants generally, non-solicitation of employment provisions specifically or other labor and employment issues, please contact:

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