

Wisconsin Supreme Court: Continued Employment is Lawful Consideration for a Non-Compete

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By: Jane C. Schlicht

On April 30, 2015, the Wisconsin Supreme Court took a stand on a hot-button for employers by holding that continued at-will employment is legal consideration that will support a reasonably drafted restrictive covenant signed by a current employee. *Runzheimer International, Inc. v. Friedlen*, 2015 WI 45.

Friedlen had been employed by Runzheimer International, Inc. for more than 15 years when he was asked to sign a restrictive covenant. Runzheimer gave Friedlen two weeks to review the restrictive covenant and informed him that if he did not sign it his employment would be terminated. Friedlen signed the restrictive covenant and was employed by Runzheimer for another two years. His employment subsequently was terminated and Friedlen went to work for a competitor. Runzheimer sued and the circuit court determined that the agreement was unenforceable as it was not supported by consideration. The circuit court reasoned that promising not to fire an employee immediately if he signs the agreement is an illusory benefit that cannot support the “give-and-take” necessary to support a legal contract.

The Wisconsin Supreme Court disagreed. In reaching its decision, the Court explained that the **duration of the continued employment was of no consequence**. However, the Court warned, employers may not misrepresent their intention to continue to employ the employee. Doing so could subject the employer to claims of fraud in the inducement and breach of the duty of good faith and fair dealing and render the agreement unenforceable.

With questions, please contact [Jane C. Schlicht](#) of Hinshaw’s Milwaukee office.

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