

Labor and Employment Attorneys 4-28-10

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## WISCONSIN COURT HOLDS THAT ALL EMPLOYEES OWE A DUTY OF LOYALTY TO THEIR EMPLOYER

An employer places great trust in its employees, who act as the primary representatives of the company and who build close relationships with customers on behalf of the employer. Necessarily, those employees also have access to business information about the employer, the confidentiality of which is vital to staying competitive. The benefits of this relationship are mutual and, as the Court of Appeals recently affirmed, so are the duties. Just as an employer has numerous obligations to its employees regarding terms and conditions of employment, so too do individual employees owe their employer a duty to remain loyal to the employer's interests.

In 2006, Reinhart attorneys brought suit on behalf of InfoCorp, LLC (InfoCor) against a former employee, Christopher Hunt (Hunt), and his new employer, Tierney Brothers (Tierney). Hunt worked as a salesman for InfoCor but, while still employed, he began diverting his sales to Tierney. He even went so far as to organize and attend a meeting between InfoCor's biggest customer and Tierney that ultimately resulted in InfoCor losing that customer's business. Soon thereafter, Hunt resigned and began working for Tierney directly. In the subsequent lawsuit, InfoCor argued that Hunt had breached the duty of loyalty he owed to InfoCor as its employee. The trial court, however, dismissed this claim, and all others that were based on it, after finding that only high-level executives owe a duty of loyalty to their employer.

Led by Reinhart attorneys Christopher P. Banaszak and Robert S. Driscoll, InfoCor appealed the trial court's decision. Relying on long-standing Wisconsin law, InfoCor argued that all employees, regardless of their status within an organization, owe their employers a duty of loyalty within the scope of their employment. Employees, in other words, cannot actively seek to undermine the interests of their employer. To hold otherwise would greatly disrupt the employer-employee relationship. Absent some duty of loyalty, employees could, without legal consequence, drain their employer's resources and steal its customers for their own benefit.

The Court of Appeals agreed. In a unanimous decision, it reversed the circuit court and remanded the case for trial. According to the Court of Appeals, all employees—even those who are not officers or directors or who do not have policy-making authority—owe a duty of loyalty to their employer within the scope of the employee's job responsibilities. Employees who undermine the interests of their employer will be held liable for any damages resulting from acts of disloyalty.

The decision is a welcome one for employers. It clarifies that in Wisconsin employees may not use the benefits their employer confers upon them to undermine the employer's interests, thus preserving employers' ability to compete fairly in the open marketplace.

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