

Inconsistent Restrictions May Render Your Noncompete Unenforceable

A decision from a Wisconsin state court serves as an important reminder that employers should think twice before subjecting similarly situated employees to different restrictive covenants.

The Circuit Court of Waukesha County recently denied Kohl's Department Stores' ("Kohl's") request for a temporary injunction barring a former executive, Janet Schalk, from accepting employment with a competing company. Schalk was employed by Kohl's as its Chief Information Officer until she resigned on July 22, 2015 to take a similar position at Hudson's Bay. Schalk's employment contract with Kohl's contained a restrictive covenant that prohibited her from taking a similar position with a competitor until one year had elapsed after her separation of employment with Kohl's. Kohl's sought to enforce the restrictive covenant to prevent Schalk from working for Hudson's Bay.

The court denied Kohl's request for a temporary injunction, holding that Kohl's had failed to establish that Schalk's restrictive covenant was reasonably necessary to protect Kohl's business interests. Of particular significance to the court was the fact that the restrictive covenant against Schalk was more restrictive than other covenants contained in the employment contracts of other high-ranking employees at Kohl's, such as its operating, marketing and finance officers. As Kohl's failed to satisfactorily explain the necessity for a broader restrictive covenant for Schalk than these other, similarly situated employees, its request for a temporary injunction was denied.

In light of this case, employers should consider the following:

- Be consistent with restrictive covenants. Generally, similarly situated employees should all be subject to the same restrictions.
- For out-of-state employees, ensure that their agreements comport with applicable state law; states apply different enforceability standards to restrictive covenants.
- An attorney should review all employment-related agreements—particularly restrictive covenants—to ensure they comport with current law, as this area of law is regularly evolving.

Please contact [Katie Triska](#) or your Reinhart attorney if you have any questions, or

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if you would like Reinhart to review your company's restrictive covenant agreements.

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