

Wisconsin Employers May Need to Review Non-Solicitation Agreements

On January 19, 2018, the Wisconsin Supreme Court issued a decision in *The Manitowoc Company, Inc. v. Lanning*, which will have a significant impact on Wisconsin employers that use restrictive covenant agreements. In a landmark decision, the Wisconsin Supreme Court held that Wisconsin Statutes section 103.465, which governs restraints on trade, applies to employee non-solicitation provisions. Consequently, the restrictions contained in employee non-solicitation provisions must be "reasonably necessary for the protection of the employer."

Finding that employee non-solicitation provisions are a restraint on trade under Wisconsin Statutes section 103.465, the *Lanning* Court addressed the reasonableness of The Manitowoc Company, Inc.'s employee non-solicitation provision under Wisconsin Statutes section 103.465, thus providing Wisconsin employers with some guidance on what types of non-solicitation restrictions may be found unreasonable.

Wisconsin courts have previously established five criteria that restrictive covenants must meet in order to be enforceable under Wisconsin Statutes section 103.465:

- The restraint must be necessary for the protection of the employer;
- The restraint must have a reasonable time limit;
- The restraint must have a reasonable territorial limit;
- The restraint must not be harsh or oppressive to the employee; and
- The restraint must not be contrary to public policy.

Applying these criteria, the *Lanning* Court held that the employee non-solicitation provision at issue in the case was unenforceable. The Court held that the non-solicitation provision, which prohibited the solicitation of "any employee," created a "sweeping prohibition" that prohibited an employee from encouraging *any* employee, no matter the employee's job position or location, to terminate employment for *any* reason. The Court held that the company lacked a protectable interest that would justify such an expansive restriction.

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Wisconsin employers are encouraged to immediately review their restrictive covenant agreements to ensure that any employee non-solicitation provisions contained in such agreements are reasonable and enforceable under Wisconsin Statutes section 103.465. Non-solicitation provisions prohibiting the solicitation of "any employee" for any reason, including for non-competitive employment, are among those provisions which would likely be rendered unreasonable and unenforceable under Wisconsin law.

If you have any questions regarding the law on restrictive covenants in Wisconsin, or would like us to review your restrictive covenants, please contact your Reinhart attorney.

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