

# Wisconsin Supreme Court Rejects "All or Nothing" Rule for Restrictive Covenants in Employment Contracts

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Enforcing covenants not to compete in Wisconsin just became easier for employers. For years, courts in Wisconsin have routinely refused to enforce any restrictive covenants in an employment contract if even one was found unreasonable. For example, an overly broad noncompetition provision could invalidate other reasonable restrictions on soliciting certain customers or preserving confidential business information. The Wisconsin Supreme Court's decision in *Star Direct v. Dal Pra* not only reverses that rule, but also includes a welcome acknowledgment of the considerable interest employers have in protecting their assets through such covenants.

Clarifying previous case law, the Court held that separate restrictions in an employment contract do not have to be read as a single covenant, so long as they constitute separate promises and are not drafted in a way that links them to each other. The prior "all or nothing" rule often forced employers to take a much more conservative approach by making every covenant in an agreement as modest as possible in order to avoid losing any postemployment protection whatsoever.

Moreover, the following holdings of the Court in *Star Direct* will make it easier to enforce restrictive covenants in general:

- Although restrictive covenants are read in favor of the employee, courts should not make an effort to find such covenants unreasonable. Instead, courts must interpret the language as they would any other contract.
- Employers may prohibit solicitation of their past customers even if the employee had no recent contact with those customers.
- Employers may require newly-hired salespeople to sign restrictive covenants

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even if current employees are not required to do so. So long as the policy is consistently enforced going forward, the covenants are enforceable.

Many previous decisions from Wisconsin courts appeared to place insufficient weight on the seriousness of the threat posed by post-employment competition. In *Star Direct*, the Wisconsin Supreme Court considered this factor in holding that a fairly broad restriction on soliciting a company's customers was in fact reasonable, stating "[w]e decline to permit Dal Pra to usurp for his own benefit the customers, relationships, and opportunities that Star Direct paid for and invested in. The customer clause is necessary for Star Direct's protection because without it there is nothing preventing Dal Pra from taking advantage of all of Star Direct's investment in its route and customers for his own benefit and to Star Direct's detriment."

While the *Star Direct* decision is a positive one for employers, the Court also emphasized that restrictive covenants in Wisconsin are still disfavored. Therefore, enforcing restrictions in the future will remain a challenge. However, as a result of this ruling, many employers may want to consider revising their current employment agreements to include certain restrictions previously considered too risky.

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