State of Illinois Files Suit to Declare Non-Competes That Bind Low Wage Employees Are Unlawful and Unenforceable

In a somewhat unusual move, the state of Illinois has filed a complaint against Check Into Cash of Illinois, Inc., on behalf of the citizens of the state, seeking a declaration that the non-competition covenants that the company requires its employees to sign are unenforceable and violate the Illinois Freedom to Work Act, 820 ILCS 90/1.

The state of Illinois asserts that the non-competition restrictions have an indirect impact on decreasing employee mobility, result in wage suppression, are a restraint of trade and limit the pool of available workers in Illinois.

Check Into Cash operates 33 stores in Illinois (and others across the United States) that provide payday loans, title loans, check cashing, bill payment and cash advances. The Check Into Cash employees fall into one of three categories: customer service representatives, assistant managers or store managers. Regardless of titles, the complaint alleges that all three classifications of employees assist customers at store locations, complete routine administrative tasks and perform collections duties. The complaint alleges that store employees do not provide highly individualized products or services, but instead provide standardized and non-unique products or services. In addition, the complaint alleges that the employees are at-will, have little to no access to trade secrets and that many earn less than $13 an hour.

The non-competition provision at issue provides that during their employment and for a one-year period thereafter, they will not:

- solicit, call upon, transact, offer, or render any deferred presentment, deferred deposit, and/or any other payday advance services, check-cashing services, pawn or title pawn services, secured or unsecured open-end credit lending services, secured or unsecured installment lending services, secured or unsecured single payment lending services, and/or any other consumer lending services or money
transmission services, directly or indirectly, as an employee, officer, consultant, or in any other capacity, for any individual, firm, or entity which provides deferred presentment, deferred deposit, and/or any other payday advance services, check cashing services, pawn or title pawn services, secured or unsecured open-end credit lending services, secured or unsecured installment lending services, secured or unsecured single payment lending services, and/or any other consumer lending services or money transmission services; [or] sell products or services that are competitive with or similar to the products or services of the Company . . . .

The complaint alleges that the above restriction is “vague, ambiguous, overly broad, and without a legitimate business purpose.” For example, the restriction does not limit the precluded employers to actual competitors of Check Into Cash.

In addition, the complaint alleges that the geographic limitation — within a 15-mile radius of any office or location of Check Into Cash — is overly broad, as it is not limited to the radius around the employee’s actual work location. Finally, the restrictions apply regardless of the length of time that employee has been employed by Check Into Cash.

Restrictive covenants in Illinois must be tailored to protect legitimate business interests, which can include customer and confidential information. Recognizing that, the complaint alleges that such confidential customer or business information is adequately protected by the Check Into Cash’s confidentiality and non-solicitation provisions contained in the employee’s employment agreements, as well as the company’s other policies and procedures.

Finally, the Illinois Freedom to Work Act prohibits the use of non-competes with employees that earn less than $13 an hour. The act defines a “covenant not to compete” as an agreement entered into after Jan. 1, 2017 between an employer and a “low-wage employee” that bars the employee from performing “(A) any work another employer for a specified period of time; (B) any work in a specified geographical area; or (c) work for another employer that is similar to such low-wage employee’s work for the employer included as a party to the agreement.” A “low-wage employee” is defined as an employee “whose earnings do not exceed the greater of (1) the hourly rate equal to the minimum wage required by the applicable federal, State, or local minimum wage law or (2) $13.00 per hour.”

Based on the allegations of the complaint, it would appear that Check Into Cash has an uphill fight. That being said, there are many ways that companies can protect themselves against employees unfairly competing against them, soliciting customers and other employees and/or taking confidential information. Those protections can include restrictions and policies against competition, solicitation and the disclosure of confidential information, however, those restrictions need to be appropriately drafted and focus on the legitimate business concerns of the employer.