



LAW NOTES

from the Law Firm of
Kay & Andersen, S.C.

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What Every Employer Should Know.....

ABOUT TIME LIMITATIONS IN NON-COMPETE AGREEMENTS

Wisconsin employers often try to protect the confidentiality of critical resources such as customer lists, cost margins, etc. by requiring employees to enter into agreements not to disclose such information and not to enter into competition for a period of time after leaving the company. These “restrictive covenants” are generally enforceable in Wisconsin, although any covenant imposing an unreasonable restraint will be unenforceable in its entirety, even if the unreasonable provision only makes up a small portion of the agreement. Wis. Stat. § 103.465. In a recent Wisconsin Court of Appeals decision, H&R Block Eastern Enterprises, Inc. v. Swenson, No. 2006AB1210 (Wis. Ct. App. December 20, 2007), available at <http://www.wisbar.org/res/capp/2007/2006AP001210.htm>, the length of a non-compete agreement was reviewed for reasonableness. Several H&R Block tax preparers had signed employment contracts containing agreements stating that for two years following their termination of employment, the tax preparers would not provide tax services to any H&R Block clients or solicit those clients’ business. The agreement also said that the two-year period would be “extended by any period(s) of violation.” Two former H&R Block employees formed a new business providing tax and bookkeeping services, and hired four other former H&R Block employees. H&R Block subsequently filed a lawsuit seeking damages against the former employees for breaching the restrictive covenant in their employment agreements. The former employees asked the circuit court to dismiss the H&R Block claims on the basis that the “extension period” in the restrictive covenant created an ambiguity and rendered the covenant unenforceable. The Court of Appeals agreed with the employees and dismissed H&R Block’s claims. The Court held that the former employees would not be able to tell from the terms of their employment contract how long the extension would last for particular conduct, because it could not be determined how long each such violation would have lasted. In addition, there could be legitimate disputes as to whether certain conduct violated the covenant, which would not be known until a court resolved the issue. Kay & Andersen, S.C. can help employers develop appropriate restrictive covenants and protect the employer’s proprietary interests if litigation becomes necessary against former employees.

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