# Weekly Wright Report (12/4/17)

## EMPLOYMENT LAW

### Does a LinkedIn Invitation Violate an Employee's Non-Compete?

Employers often ask whether they should have employees sign restrictive covenant agreements to protect business relationships, other employees, and ideas from walking out the door when an employee leaves a company. Of course, the contractual language has to be right and the terms should be reasonable for covenants to be enforceable, but what happens when an employee has created a large social media following from professional contacts in the industry? The rise of social media, and its convergence into the business realm, has caused companies to wonder whether former employees are violating restrictive covenants when networking on social media. An Illinois appellate court recently considered the complex nature of these communications in the form of a LinkedIn invite.

In *Bankers Life & Casualty Co. v. American Senior Benefits,* Bankers Life hired a branch sales manager who signed a non-solicitation agreement. Part of the agreement required the manager not to solicit Bankers Life employees after he left the company. When the manager left the company, Bankers Life claimed that he "recruited or attempted to recruit Bankers Life employees and agents from the Warwick, Rhode Island office, by sending LinkedIn requests to connect to three employees." Once connected on LinkedIn, the three employees clicked on the former sales manager's LinkedIn profile and saw that the manager's new employer, American Senior Benefits, had open positions because the advertisement was posted on his profile page.

The question before the Appellate Court was whether an LinkedIn invitation to connect can be considered an attempt to solicit employees in violation of a non-solicitation agreement. The former sales manager claimed that merely inviting one to connect on LinkedIn is not a prohibited solicitation, in contravention to the non-solicitation agreement. The sales manager put forward evidence to show that he did not send any direct messages to the three Bankers Life employees, but simply sent the standard LinkedIn request message that the three employees form a professional connection with him through the business social media platform.

The Appellate Court agreed and upheld the grant of summary judgment in favor of the former employee. The court found that the "invitations to connect via LinkedIn were sent from [the employee]'s LinkedIn account through generic emails that invited recipients to form a professional connection. The generic emails did not contain any discussion of Bankers Life, no mention of [his new employer], no suggestion that the recipient view a job description on [the



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employee]'s profile page, and no solicitation to leave their place of employment and join [his new employer]."

Indeed, it did not matter to the court that the employee's LinkedIn page had a job posting for his new employer. Instead, what mattered to the court was that upon receiving the e-mails, the Bankers Life employees had the option of responding to the LinkedIn requests to connect. The court noted that where the substance of a LinkedIn communication revealed an invitation to apply for a position, such communication could rise to the level of a solicitation, but that was not the situation in this case.

With any form of electronic communication, it is often less important how that information is communicated, but rather what is communicated that matters. For guidance on what your company's restrictive covenants should include, ask Laura LRubenstein@wcslaw.com

## GOVERNMENT CONTRACTING

### Changes proposed in the HUBZone Program

In 1998, Congress created the Historically Underutilized Business Zone Program (HUBZone), a procurement initiative that provides federal assistance to companies in economically distressed areas. The HUBZone helps small companies in designated areas to do business with the federal government. "The program's core mission is to bring economic hope, independence, jobs, and businesses to depressed areas marked by high unemployment and poverty. This is accomplished through the use of federal contracting preferences." Rep Steve Chabot (R-OH), Chairman, House Standing Small Business Committee. The program is overseen by the Small Business Administration (SBA). Unfortunately, the program has never met the SBA's goal of awarding 3% of its contracts to HUBZone certified businesses and program participation has dropped off recently. Indeed, nearly 90 percent of HUBZones do not have a single certified firm.

One of the limitations on the effectiveness of the current HUBZone program is that HUBZone area determinations frequently change, as often as annually and potentially several times per year. This leaves small businesses unable to anticipate shifts in what areas will be designated as a HUBZone. To address these issues, legislation entitled the HUBZONE Unification and Business Stability Act (H.R. 3294) was recently submitted to change and improve the program. Under the proposed legislation, the current HUBzone maps would be frozen until 2020 and thereafter would only be reviewed every five years. The proposed legislation would also change the calculations by which certain geographic areas qualify for the program, potentially adding as many as 1,000 rural and non-urban counties to the program, helping more businesses participate in the HUBZone benefits. The text of H.B. 3295 can be accessed here. With discussion in progress, if you have an interest, this might be a good time to contact your Congressperson and share your thoughts. Ask Mike MStover@wcslaw.com.



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