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Fenwick Employment Brief

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FEDERAL COURT FINDS GLOBAL RESTRICTION IN ESTEE LAUDER'S NONCOMPETITION AGREEMENT REASONABLE, BUT 12-MONTH LIMITATION UNREASONABLE

In *Estee Lauder Co. v. Batra*, a federal district court judge in New York granted a preliminary injunction against a former Estee Lauder senior executive who allegedly breached his noncompete agreement by taking a job with a rival cosmetics maker.

Shashi Batra had worldwide responsibilities as the global general manager for two of Estee Lauder's brands. When he first began working at Estee Lauder, Batra signed an employment agreement that contained confidentiality, non-solicitation, and non-competition provisions. The non-competition provision provided in part that Batra would not work for any business in competition with Estee Lauder anywhere in the world for 12 months after his termination of employment and would not disclose trade secrets. In return for signing the agreement, Batra received a $100,000 signing bonus, a salary of $300,000 per year, and a benefits package.

In March 2006, Batra notified Estee Lauder that he was resigning his position to join Perricone, a rival cosmetics company. Estee Lauder reminded Batra of his obligations under the noncompetition agreement; Batra responded that Estee Lauder would not be able to enforce the noncompetition agreement under California law. Batra, a resident of California, filed a lawsuit in California state court to invalidate the noncompetition agreement. Then, he began employment as the president of Perricone. Shortly thereafter, Estee Lauder, whose headquarters and principal place of business is in New York, filed suit in federal court in New York, seeking a preliminary injunction under New York law to prevent Batra from violating his noncompetition agreement.

Although acknowledging California's public policy against enforcement of noncompetition agreements, the federal court denied Batra's request that the court abstain from hearing the case until the California state litigation was resolved, finding instead that the balance of factors weighed in favor of exercising jurisdiction.

The federal court held that Estee Lauder's agreement did not seek an improper purpose. The non-compete clause did not prohibit Batra from employment with all competitors of Estee Lauder, but limited Batra from employment in which he could misuse Estee Lauder trade secrets and confidential information.

Second, the federal court held that Estee Lauder did not have to establish a misappropriation of trade secrets before enforcing the agreement. Rather, Estee Lauder simply had to establish that there was a risk of inevitable disclosure.

Finally, the court discussed the reasonableness of the scope of the agreement. With respect to the world-wide scope of the restriction, the court found that given Batra's responsibilities and the international scope of Estee Lauder's business and the cosmetic industry in general, the worldwide geographic limitation was reasonable. However, with respect to the 12-month

non-compete period, the court found that Estee Lauder in the past had reduced the timeframe of similar noncompete periods for other executives who left the company and that the company had offered to reduce the noncompete period to four months when Batra announced his resignation. Accordingly, the court granted Estee Lauder a five-month period of enforcement on the non-compete agreement.

CALIFORNIA COURT OF APPEALS UPHOLDS CLASS ACTION WAIVER IN PRE-EMPLOYMENT ARBITRATION AGREEMENT

In *Gentry v. Superior Court*, plaintiff filed a class action lawsuit against his former employer Circuit City for allegedly misclassifying plaintiff and other salaried customer service managers as "exempt managerial/ executive employees" not entitled to overtime. During his employment, plaintiff received a dispute resolution packet, pursuant to which employees are afforded various options (including arbitration) to resolve employment-related disputes. The agreement to arbitrate also contained a class action waiver. The packet contained a form giving the employee 30 days to opt out of the arbitration agreement. Plaintiff did not opt out.

The issue before the court of appeals was whether the class action waiver in the arbitration agreement was unconscionable therefore rendering that provision unenforceable. First, the court found that the agreement was not procedurally unconscionable. Circuit City's contract did not contain an adhesive element: signing the agreement was not made a condition of plaintiff's employment, and plaintiff had 30 days to decide whether to opt out of the agreement, but chose not to. The court also found that the dispute resolution packet describing the arbitration process was written in straightforward language, and that although it pointed out the advantages of electing arbitration, it also noted the disadvantages, thereby leaving it up to the individual employee to weigh the advantages against the disadvantages.

The court further found that the arbitration agreement was not substantively unconscionable. The Circuit City agreement was not a "consumer contract of adhesion" that the employee had no opportunity to reject. The court also noted that this was not a case involving a small amount of damages such that the class action mechanism was the only practical way of addressing any alleged wrong. Instead, the court found that plaintiff alleged statutory violations under the Labor Code that could result in substantial damages. Finding neither procedural nor substantive unconscionability, the court declared the agreement enforceable.

Note: This decision will be reviewed by the California Supreme Court.

NEWS BITES

A California jury awarded $1.7 million, including $1.2 million in punitive damages to a female sales employee on her claim for sexual harassment against her former employer. In *Orlando v. Alarm One, Inc.*, Janet Orlando alleged that she was spanked on three occasions in front of her co-workers in what the company called a camaraderie-building exercise. Sales teams at the company were encouraged to compete against each other to reach sales goals. The members of the losing teams were forced to eat baby food, wear diapers, or get spanked on their buttocks with an opposing company's yard signs. Plaintiff claimed that being spanked in front of her colleagues, many of them young men, who would taunt her and yell profanities, was so humiliating she was compelled to quit. The jury's award of over $1 million in punitive damages included $100,000 against the company's vice president and $50,000 against each of plaintiff's two supervisors.

In a decision favorable to employers on the issue of FMLA leave, the Court of Appeals for the Eighth Circuit (covering Missouri and other Midwest states) held that an employer may permissibly limit an employee's time

away from work to the maximum 12 weeks permitted under the FMLA even when an employee benefit plan or bargaining agreement provides for more than 12 weeks of paid sick leave. In *Slentz v. City of Republic*, the plaintiff was injured while off duty. The employer designated plaintiff's sick leave as FMLA leave, required plaintiff to submit a fitness-for-duty certificate before returning to work, and informed him that he would be expected to resign at the expiration of his FMLA leave if he did not provide such a certificate. The employee's physician declined to certify him as fit for duty until he had fully recuperated—which was several weeks after the expiration of his 12-week leave. Thereafter, plaintiff resigned and sued, alleging that the employer wrongfully interfered with his rights under the FMLA by extending him only 12 weeks of leave despite his having more than 12 weeks of accrued sick leave. The trial court granted summary judgment for the employer and the Court of Appeals affirmed, holding that it was permissible for the employer to run FMLA leave concurrently with accrued sick leave.

An Alameda County judge ordered Cintas Corporation to pay more than $800,000 in back pay and an additional $360,000 in interest for violating the city of Hayward's living-wage ordinance. In *Amaral v. Cintas Corp.*, plaintiffs filed a class-action lawsuit against the company, alleging that plaintiffs and approximately 50 other workers were paid less than the city ordinance required. The Hayward law was passed in 1999 and requires companies who do business with the city to pay their workers a minimum wage of $9.26 per hour if health insurance benefits are provided, or $10.71 per hour if no such benefits are provided.

In *Reeves v. Swift Transportation Company*, the plaintiff, a truck driver, sued under the federal Pregnancy Discrimination Act after her employer terminated her employment. Truck drivers at Swift were required to be able to push and pull loads from 100 to 200 pounds. After plaintiff learned she was pregnant, her doctor restricted her to lifting 20 pounds. Plaintiff requested light-duty work for the duration of her pregnancy. However, the employer had a policy of offering light-duty work assignments only to employees on workers' compensation leave—that is, employees who sustained on-the-job injuries. Swift terminated plaintiff's employment because she could not perform her regular duties. The federal Sixth Circuit Court of Appeals (covering Tennessee, Kentucky, Ohio, and Michigan) upheld the trial court's grant of summary judgment dismissing plaintiff's pregnancy discrimination claim. The court found the employer's light-duty policy was "pregnancy-blind" and that plaintiff failed to produce any evidence that the employer used this policy as a pretext for discrimination.