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The California Supreme Court recognizes a tort cause of action for interference with an at-will employment contract, striking a balance between discouraging unfair or unethical business practices and promoting healthy, lawful competition.

The California Supreme Court's Opinion Regarding Interference with At-Will Employment Relationships: Clear Sailing or Opening the Floodgates for Litigation?

By Dylan W. Wiseman

In a stated effort to promote and encourage fair and lawful competition, on August 12, 2004, a unanimous California Supreme Court rendered its decision in *Reeves v. Hanlon*, 33 Cal. 4th 1140 (2004). The central issue in *Reeves* was whether inducing an at-will employee to breach an employment relationship could give rise to liability for the employee's new employer. *Reeves* concluded that an aggrieved former employer could "recover for intentional interference with an at-will employment relation" when the employee's new employer engaged in "independently wrongful acts" when inducing the new hire to join its ranks. The Court defined "independently wrongful acts" as "an act proscribed by constitutional, statutory, regulatory, common law, or other determinable legal standard."

In plain English, if the new employer intentionally acts to disrupt the former employer's business by engaging in "unlawful and unethical conduct," then the new employer may be liable for disrupting an at-will employment relationship. Examples of "unlawful or unethical conduct" include encouraging new hires to quit abruptly without notice so that they compromise deadlines of their former employer; instructing or encouraging departing employees to delete computer files, destroy documents, misappropriate confidential information or trade secrets; or encouraging departing employees to solicit customers.

The Factual and Legal Issues in *Reeves v. Hanlon*.

When the defendants in *Reeves v. Hanlon* departed from their former employer, a law firm which specialized in immigration law, they induced six of their former employer's at-will employees to join their new practice. The issue before the California Supreme Court was whether "the tort of interference with contractual relations may be predicated upon interference with an at-will contract." Answering that question with "yes," the Court found that, historically speaking, the at-will relationship is between the employer and employee, and that the "contractual relationship is at the will of the parties, not at the will of outsiders."

Recognizing the validity of lawful competition, the Court acknowledged that "one commits no wrong merely by soliciting or hiring the at-will employee of another." The Court also found that "it is ordinarily not a tort to hire the employees of another for use in the hirer's business." "However, if either the defecting employee or the competitor uses unfair or deceptive means to effectuate new employment, or either of them is guilty of some concomitant, unconscionable conduct, the injured former employer has a cause of action to recover for the detriment thereby suffered."

In order to balance the competing interests of promoting fair competition and protecting stable economic relationships, the Supreme Court adopted the following standard to be applied to at-will employment relationships: "[T]o recover for a defendant's interference with an at-will employment relationship, a plaintiff must plead and prove that the defendant engaged in an independently wrongful act — *i.e.*, an act 'proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard.'"

In the case before it, the Supreme Court found that defendants had unlawfully interfered with the former employer's at-will employment relationships. The Court noted that at the time the former employer's at-will employees were being lured away, defendants

also mounted "a campaign to deliberately disrupt plaintiff's business." Those efforts included having employees abruptly resign without notice; leaving no status reports for pending matters or deadlines; deleting and destroying plaintiff's computer files and forms; misappropriating confidential information; and improperly soliciting plaintiff's clients.

A Practical Guide to Hiring Employees in California After *Reeves v. Hanlon*.

The message from *Reeves* is that, if California employers engage in unlawful or unethical tactics while luring away at-will employees, they could become subject to liability for interfering with another employer's at-will employment relationships. While it is certainly important to protect lawful and legitimate competition and to discourage unlawful or unethical acts, *Reeves* may open the floodgates to litigation between competitors. Often, the facts and circumstances regarding the hiring of new employees are perceived as "poaching" or "raiding" by the former employer even if the hiring company has taken proper measures to hire its employees. As a result, the problem created by *Reeves* is that employers who are frustrated or dismayed by the departure of valued employees, or who may not be privy to enough facts regarding the circumstances of their former employees' departure, may use the *Reeves* decision as a basis to commence litigation against competitors.

Reeves sends a clear and resounding message to California's employers — there is no liability for hiring another company's employees, provided that the hiring company does not engage in unlawful or unethical conduct. To help avoid litigation regarding hiring another company's at-will employees, we recommend the following:

1. First and foremost, a company's hiring practices should be directed toward adding talent to its ranks, and not toward causing harm to its competitors. A company should not use its hiring practices to gain access to information held by competitors.

2. New hires should be informed in writing that they are not to take any actions which might be perceived as "unethical or unlawful" as they join the ranks of the new company. In essence, new hires should be told not to "burn any bridges" with their former employer, and to cooperate with their current employer and remain professional throughout their transition to their new employer. New hires should also be required to give their former employers ample notice of their departure.

3. New hires should be informed in writing not to take or copy any information from their former employer which may be considered to be confidential information or a trade secret. In most disputes, the identities of the former employer's customers and the former employer's pricing information form the basis for claims against the hiring company. Companies should take specific measures to address those issues, including modifying their existing confidentiality agreements to specify that new hires should not take or remove information about the former employer's customer lists or pricing information.

4. New hires should be instructed in writing not to use or disclose information that may be considered confidential information or a trade secret of their former employer. It is a common misconception in California that only the physical taking of confidential information or trade secrets creates liability. Liability under the Uniform Trade Secrets Act (Civil Code sections 3426.1-11, "UTSA") is not limited to absconding with documents or copying electronic files. The UTSA also prohibits a former employee from using the content of his or her memories to use or disclose trade secret information. *Morlife, Inc. v. Perry*, 56 Cal.App.4th 1514, 1523 (1997). New hires should be instructed not to use or disclose the contents of their memories, particularly regarding the identities of their former employer's customers and their former employer's pricing information.

5. New hires should be required to disclose and provide copies of any confidentiality agreements, non-solicitation provisions, intellectual property assignment clauses, or any other agreements which could limit or restrict their post-termination activities.

6. Companies should modify their existing employee non-solicitation provisions so they are consistent with the holding in *Reeves*. Alternatively, in light of *Reeves*, companies should consider abandoning their contractual protections in favor of proceeding under the viable tort theory of interference with an at-will relationship.

7. New hires should not "solicit" customers of their former employer, but *Reeves* indicates they can send a "professional announcement." Under California law, "'[s]olicit' means '[t]o appeal to (for something); to apply to for obtaining something; to ask earnestly; to ask for the purpose of receiving.'" Merely informing customers of one's change in employment, without more, is not solicitation. *Reeves* suggests that no liability arises out of sending a professional announcement that states one's new address and telephone number or other contact information.

In conclusion, *Reeves v. Hanlon* is a significant decision and will have implications for California employers for years to come. The California Supreme Court plainly seeks to encourage lawful competitive activities, and makes viable the claim of interference with at-will employment relationships to discourage unlawful or unethical business practices that are incident to the hiring of employees.

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