

CCM e-News Brief

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[Compliments of Charlotte Bishop, President, Creative Case Management, Inc.]

IL Supreme Court Rules. The Illinois Supreme Court has declined to review the *Fifield* decision. *Fifield* is the June 2013 case where the Illinois Appellate Court for the First District (Cook County) held that employment at will was not adequate consideration for a restrictive covenant (*i.e.*, non-competes, non-solicitation clauses, etc.) This was a change in the law since, historically, employers did not have to offer any extra consideration when new hires signed restrictive covenants. Under *Fifield*, employers whose employees had signed restrictive covenants would need to either provide them with consideration like a signing bonus, or hope that they stayed on for two years since Illinois courts have held that the consideration requirement is satisfied by two years of subsequent employment. Now that the Illinois Supreme Court has declined to review *Fifield*, employers face certain realities. If you are in Cook County, *Fifield* is controlling law. Your employees may be emboldened to test the enforceability of their covenants. The most aggressive way to address that risk would be to have employees sign new covenants and provide them with consideration. That can be expensive. However, the consideration need not be a cash payment. There are creative ways to structure consideration such as severance, additional vacation, etc.

Independent Construction Contractors? Illinois Department of Labor (IDOL) Director Joseph Costigan issued a statement on the Illinois Supreme Court's decision to uphold the constitutionality of the state's Employee Classification Act, which protects individuals working in the construction industry from being misclassified as independent contractors and ensures a level playing field within the industry. The Court rejected a constitutional challenge posed by a roofing contractor that claimed the law violates "due process rights and is impermissibly vague," (*Bartlow v. Costigan*, Ill., No. 2014 IL 115152, 2/21/14) and stated the law was constitutional on Feb 21. Since the law went into effect in 2008, the Department has conducted 111 investigations and collected \$314,325.70 in penalties. Director Costigan's statement: "The Illinois Supreme Court's ruling is a victory for Illinois workers and taxpayers. Misclassifying employees as independent contractors means payroll taxes, unemployment insurance, worker's compensation premiums and overtime do not get paid. Misclassifying workers is illegal, places an unfair tax burden on workers, and costs the State of Illinois up to \$700 million a year in lost taxes and payments. "Last year, Governor Quinn signed legislation that strengthens our authority to crack down on illegal practices and to ensure hard-working families are paid what they're owed. The Court's decision helps us in the fight against those practices. We thank the Illinois Attorney General's office for their continued assistance."

<http://www.workerscompensation.com/compnewsnetwork/news/18405-state-issues-statement-on-illinois-supreme-court-decision-to-uphold-constitutionality-of-employee-classification-act.html>

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