Legal Update Article

Finding COVID-19 Layoff Not Furlough, Court Denies Motion to Restrain Competition

By Clifford R. Atlas & Erik J. Winton

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Meet the Authors

Clifford R. Atlas

(He/Him)
Principal
(212) 545-4017
Clifford.Atlas@jacksonlewis.com

Erik J. Winton

Principal
(617) 367-0025
Erik.Winton@jacksonlewis.com

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A federal district court has denied a motion to temporarily restrain an employee laid off due to the COVID-19 pandemic from competing against his former employer. *Schuylkill Valley Sports, Inc. v. Corporate Images Co.*, No. 5:20-cv-02332, 2020 U.S. Dist. LEXIS 103828 (E.D. Pa. June 15, 2020). The Pennsylvania court concluded that the COVID-19 layoff, while characterized as a temporary "furlough" by the employer, actually was a termination that extinguished the departing manager's at-will employment.

In balancing the equities, the district court decided that the public interest did not favor an injunction prohibiting competitive employment when the United States was facing the highest unemployment rates in more than seven decades.

Background

On March 30, 2020, manager Phil Snyder was among several employees of plaintiff Schuylkill Valley Sports (SV Sports) selected for a company-wide layoff resulting from the COVID-19 pandemic. After being laid off by SV Sports, Snyder joined an alleged competitor, Corporate Images (CI), and solicited several other laid off SV Sports employees to join him at CI.

SV Sports filed suit against Snyder and CI, asserting claims for unfair competition, breach of contract (based on Snyder's non-compete agreement and a provision in the employee handbook prohibiting solicitation of other employees), breach of fiduciary duty, and tortious interference with business and contractual relationships, among other claims. SV Sports moved for an emergency order temporarily enjoining Snyder's employment with CI and the solicitation of SV Sports' customers and employees.

Court's Decision

The court denied SV Sports' motion. Critical to its holding was the court's conclusion that the COVID-19 layoff on March 30, 2020, actually was a "termination" of Snyder's at-will employment.

SV Sports argued that the COVID-19 layoff was only a temporary "furlough," and Snyder remained employed until SV Sports "terminated" him on May 18, 2020, after the allegedly unlawful solicitations occurred. In support of its argument, SV Sports claimed that it did not issue termination letters or notices under the Consolidated Omnibus Budget Reconciliation Act (COBRA) to the laid off employees.

The court was not persuaded. It found the following significant: SV Sports used the word "layoff" rather than "furlough" in its announcement of the March 2020 decision; required the laid off employees to return all company possessions; and cut off access to the laid off employees' company email accounts. Each of these factors indicated to the court that SV Sports did not merely temporarily "furlough" the employees. Further, even if SV Sports anticipated that the layoff would only be temporary, it offered no end date for the layoff and

"continuously refused to guarantee that anyone would be reinstated," leaving the laid off employees with no "reasonable expectation of recall."

Having concluded that SV Sports terminated Snyder's employment on March 30, 2020, as a result of the COVID-19 layoff, the court ruled Snyder's non-compete agreement was unenforceable. Significantly, the applicable agreement contained a provision stating it was enforceable only in the event of Snyder's resignation or termination for "just cause," and specifically did "not apply in situations where, through no fault of the Employee, the position is eliminated[.]" The court also held that the layoff extinguished Snyder's duty of loyalty and any non-solicitation obligation he owed under the employee handbook, leaving him free to join CI and solicit other employees that SV Sports laid off.

In weighing the equities, the court also described the "great" harm Snyder would suffer if he now were required to look for another job. Although the local "stay-at-home" orders were lifted, there remain COVID-19 restrictions on business operations in Pennsylvania, and the United States is in the midst of the highest unemployment rates in more than 70 years. On the evidence presented, the court determined that the public interest did not favor granting an injunction preventing Snyder's employment with CI.

Takeaways

Schuylkill highlights the factors courts may consider in deciding whether an employment relationship was terminated as a result of a COVID-19-related cessation of operations, or whether the interruption in employment was merely a temporary furlough. Here, that determination was dispositive because the non-competition restriction, by its own terms, was not enforceable in the event of a termination without "just cause." Even if the contract were written more broadly, this same question of whether the "layoff" was a termination or merely a temporary interruption might affect whether the running of the covenant was triggered.

The decision also highlights the importance of real world considerations of how the COVID-19 crisis has affected the labor market at the national, state, and local levels in assessing the propriety of injunctive relief.

SV Sports also attempted to enjoin Snyder and CI from misappropriating its confidential information and trade secrets, but the court concluded the misappropriation claims lacked supporting evidence. It is possible that the result in this case may have been different had SV Sports come forward with compelling evidence that the defendants were using or disclosing its confidential information.

Please contact a Jackson Lewis attorney in the Non-Competes and Protection Against Unfair Competition Practice Group for more information about this case and your specific non-compete scenarios.