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Massachusetts: Finally, Some Meat on the Bones of Its Noncompete Law?

WRITTEN BY

Richard D. Glovsky | Brian R. Ellixson

Last month, in *Hailey Boyd et al. v. The Boston Beer Co., Inc.*, D. Mass. 1:25-cv-13618, two former brewery representatives of the Boston Beer Company (Boston Beer) initiated a putative class action for alleged violations of the Massachusetts Noncompetition Agreement Act (MNAA or the Act). The plaintiffs contend that Boston Beer's noncompete agreements violate the Act's requirement that noncompetes be supported by "garden leave" payments or other "mutually agreed consideration." The case may finally provide guidance as to what "or other mutually agreed consideration" suffices to enforce a noncompete agreement in Massachusetts.

The MNAA

Enacted in 2018, the MNAA sets forth specific requirements that noncompetes must satisfy to be valid and enforceable under Massachusetts law. Among other things, the MNAA requires employers to pay "garden leave" or some other "mutually agreed consideration" during the enforcement period of the covenant. Mass Gen. Laws ch. 149, § 24L(b)(vii). While the MNAA explicitly defines "garden leave" as payment of "at least 50 percent of the employee's highest annualized base salary paid by the employer within the 2 years preceding the employee's termination," *id.*, it is silent as to what "mutually agreed upon consideration" is sufficient to support a noncompete under the Act.

At least one Massachusetts court interpreting the "mutually agreed consideration" requirement has found stock option awards sufficient to support a noncompete under the Act. *Cynosure LLC v. Reveal Lasers, LLC*, Civ. No. 22-11176, 2022 WL 18033055 (D. Mass. Nov. 9, 2022). In *Cynosure*, the plaintiff sought a preliminary injunction to enforce noncompetes with its former employees who left to join a competitor. The noncompetes at issue were found in equity award agreements that conditioned the grant of 500 stock options on each employee's agreement to, among other covenants, a one-year noncompete. In response, the defendants argued that the noncompetes did not comply with the MNAA because the equity agreements did not provide for garden leave. U.S. District Judge Patti B. Saris disagreed, finding stock options to be sufficient "mutually agreed consideration" under the MNAA. However, the *Cynosure* decision and subsequent decisions have yet to indicate just how much "mutual consideration" is valid.

Hailey Boyd et al. v. The Boston Beer Co., Inc.

In *Boyd*, the plaintiffs allege that, rather than provide garden leave, the company provided a one-time payment of $3,000 (less taxes) if it chose to enforce the covenant. The plaintiffs suggest this payment is not "mutually agreed consideration," but instead a disguised, deeply discounted garden-leave payment, pointing out that $3,000 was

less than 5% of their base salaries at the time of their termination. It would appear that the facts, as alleged in this case, represent a stark fact pattern from which to draw judicial review.

As of the date of this advisory, Boston Beer has not filed a pleading responsive to the plaintiffs' complaint.

Takeaways

Employers with Massachusetts-based employees subject to noncompetes should keep a close eye on this case for two reasons. First, a ruling in this case may finally answer the question: how much "mutually agreed consideration" is enough to satisfy the MNAA? Second, if plaintiffs' claims are successful, employers opting to support their Massachusetts noncompetes with "mutually agreed consideration" should be wary of copycat litigation from former employees.

Regardless of the outcome in *Boyd*, employers with Massachusetts-based employees subject to noncompetes should review their agreements for compliance with the MNAA, especially those supported by "mutually agreed consideration" instead of garden leave of at least 50% salary. If you have questions about the Massachusetts Noncompetition Agreement Act, please reach out to your Troutman Pepper Locke employment counsel.

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