

Contract Considerations in Light of CT's Ban on “No-Hire” Clauses

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Before We Get Started...

- Please remember: “Unless I’m your lawyer, I’m not your lawyer”
 - If I am your lawyer, I don’t give legal advice in a seminar/webinar
 - Education and general information

Agenda

- Quick overview of legal history on solicitation/hiring of caregivers
- Look at the language new law
- **Practical considerations for client agreements in light of the changes**

Brief Legal History

Pre-2019 - No statutory restrictions

- HCA ↔ Caregiver Non-compete: *Probably No*
- HCA ↔ Caregiver Non-solicitation: **OK**
- HCA ↔ Caregiver Non-hire: **OK**
- HCA ↔ Client Non-solicitation: **OK**
- HCA ↔ Client Non-hire: **OK**

Brief Legal History

June 2019 – Connecticut General Statutes § 20-681

- **Covenants not to compete, homemaker, companion, home health services. Prohibition established.** For purposes of this section “covenant not to compete” means **any contract or agreement that restricts the right of an individual to provide homemaker, companion or home health services** (1) in any geographic area of the state for any period of time, or (2) to a specific individual. Any covenant not to compete is against public policy and shall be void and unenforceable.

Brief Legal History

June 2019 – Connecticut General Statutes § 20-681

- HCA ↔ Caregiver Non-compete: **No**
- HCA ↔ Caregiver Non-solicitation: *Unclear*
- HCA ↔ Caregiver Non-hire: **No**
- HCA ↔ Client Non-solicitation: **OK**
- HCA ↔ Client Non-hire: **OK**

Full Text of Recent Law

House Bill 5506 (PA 22-118, 739 pages!) - Signed May 7, 2022

- Sec. 244. (NEW) (Effective from passage) (a) As used in this section, (1) "homemaker-companion agency" and "employee" have the same meanings as provided in section 20-670 of the general statutes, and (2) "no-hire clause" means a provision of a contract between a homemaker-companion agency and a client of such agency that (A) imposes a financial penalty, (B) assesses any charges or fees, including legal fees, or (C) contains any language that can create grounds for an assertion of breach of contract or a claim for damages or injunctive relief against the client for directly hiring an employee of such agency.
- (b) Any no-hire clause in a contract between a homemaker-companion agency and a client of such agency is against public policy and shall be void.

Full Text of Recent Law

- Sec. 244. (NEW) (Effective from passage) (a) As used in this section, (1) "homemaker-companion agency" and "employee" have the same meanings as provided in section 20-670 of the general statutes, and (2) "no-hire clause" means a provision of a contract between a

“no-hire clause” means a provision... that (A) imposes a financial penalty, (B) assesses any charges ... or (C) contains any language that can create grounds for an assertion of breach of contract...

(b) Any no-hire clause in a contract between a homemaker-companion agency and a client of such agency is against public policy and shall be void.

Full Text of Recent Law

- Sec. 244. (NEW) (Effective from passage) (a) As used in this section, (1) "homemaker-companion agency" and "employee" have the same meanings as provided in section 20-670 of the general statutes, and (2) "no-hire clause" means a provision of a contract between a homemaker-companion agency and a client of such agency that (A) imposes a financial penalty,
“no-hire clause” means a provision of a contract ...that [imposes consequences on the client] for **directly hiring an employee of such agency.**
- (b) Any no-hire clause in a contract between a homemaker-companion agency and a client of such agency is against public policy and shall be void.

Impact of 2022 Law

House Bill 5506 (PA 22-118) - Signed May 7, 2022

- HCA ↔ Caregiver Non-compete: **No**
- HCA ↔ Caregiver Non-solicitation: *Unclear*
- HCA ↔ Caregiver Non-hire: **No**
- HCA ↔ Client Non-solicitation: *Unclear*
- HCA ↔ Client Non-hire: **No**

Contract Considerations

- What about existing contracts?
- Going forward: **Are any client restrictions still OK?**
- **Questions for your lawyer...**
- Consider using contract to educate clients
- (Don't forget the rest of your contract)



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