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Labor and Employment Alert: Nevada Courts are Precluded from Modifying Unreasonable Noncompete Agreements

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CLIENT ALERT | 7.28.2016

The Nevada Supreme Court recently refused to apply the “blue pencil” doctrine to modify an overbroad noncompete agreement. In *Golden Road Motor Inn DBA Atlantis Casino Resort Spa v. Islam*, the Court held (in a 4-3 decision) that an unreasonable provision in a noncompete agreement renders the entire agreement “wholly unenforceable.”

Sumona Islam worked for Atlantis Casino Resort Spa as a casino host. More than a year after beginning her employment, she signed a noncompete agreement in which she agreed to refrain from employment with any other gaming establishment within 150 miles of Atlantis for one year following the end of her employment. Eventually, Islam resigned and began working as a casino host at Grand Sierra Resort, which is about three miles from Atlantis. Atlantis sued Islam to enforce the terms of her noncompete agreement. The Court refused to enforce the agreement.

The Court explained that under Nevada law, “[a] restraint of trade is unreasonable, in the absence of statutory authorization or dominant social or economic justification, if it is greater than is required for the protection of the person for whose benefit the restraint is imposed or imposes undue hardship upon the person restricted.” Nevada courts (like those in most states) consider the temporal and geographical restrictions important factors when evaluating an agreement’s reasonableness. Here, the restriction on Islam was deemed overbroad and unreasonable because the agreement precluded her from working at every casino in a 150-mile radius in any capacity, even as a custodian. The Court found this “extends beyond what is necessary to protect Atlantis’ interests and is an undue hardship on Islam.”

Next, the Court concluded that, because the work exclusion term was unreasonable, the entire agreement failed. “Under Nevada law, such an unreasonable provision renders the noncompete agreement wholly unenforceable.” The Court refused to “blue pencil” the agreement to make the overbroad restriction reasonable because “judicial restraint when confronted with the urge to pick up the pencil is sound public policy. It also concluded that restraint avoids the possibility of trampling

the parties' contractual intent and "is consistent with basic principles of contract law that hold the drafter to a higher standard." The Court seemed particularly concerned with the unequal bargaining positions of the employer and employee.

Whether and to what extent a court will modify an overbroad agreement varies. This case illustrates the importance of carefully drafting noncompete agreements to reasonably protect the employer's legitimate business interests. In Ohio, courts may substitute reasonable restrictions for unreasonable ones; in North Carolina ([see e-Alert](#)), courts will only strike-through unreasonable restrictions. And in Nevada, an unreasonable provision may negate the entire agreement. Contact your Vorys lawyer if you have questions about drafting or enforcing restrictive covenants in your employment agreements.