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Federal Appeals Court Expands Employers' Right to Sue Competitors Who Solicit Employees

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March 2007

A federal court has given employers a new and potentially powerful tool to prevent competitors from hiring away their employees. In a March 15, 2007 decision, *CRST Van Expedited, Inc. v. Werner Enterprises, Inc.*, the Court of Appeals for the Ninth Circuit ruled that California law forbids hiring an employee whom the employer knows to be under contract with his or her present employer, even if the contract does not assure the employee of continued employment for a specified period of time.

Background. The decision involved a company, CRST, which trained its employees to become truck drivers. CRST entered into written agreements with the employees providing that, if the employees left the company within one year, they would be required to pay back $3,600 in training expenses. Conversely, if CRST fired the employees within one year without cause, the company would be required to forego reimbursement of the training expenses. Werner hired two of CRST's employees within the first year of their employment, even though CRST had notified Werner of the terms of the contracts.

Werner claimed that because the employees could be fired at any time, they were "at-will employees," and that, under existing law, Werner was free to hire them so long as it did not use "independently wrongful means" in doing so. The Ninth Circuit rejected this argument. The court held that the contracts were not at-will because "the parties have limited their freedom to walk away from the employment with no consequences – the essence of an at-will contract." By hiring the employees while knowing of these restrictions, Werner had intentionally disrupted a "formally cemented economic relationship" which was "worthy of protection from interference by a stranger to the agreement." The court concluded that Werner could be held liable for Intentional Interference With Contract, Interference With Prospective Economic Advantage, and Unfair Competition.

Implications. Before this ruling, employers were generally advised that, to prevent an employee from leaving to join a competitor, the employer had to promise employment for a fixed term and thereby give up the right to fire the employee unless the employer could prove that it had "good cause" for the termination. Now, an employer may be able to accomplish the same result merely by entering into a contract that provides for some financial consequences if the employee is terminated or leaves within a given period of time. Under the CRST case, a competitor may now be held liable if it hires an employee after being notified of the existence of such restrictions. While it remains to be seen whether other courts will adopt the Ninth Circuit's holding, the decision should deter companies from soliciting employees they know to be under any form of a contract with a competitor.