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Beware Of The Court Of Public Opinion

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As we have mentioned before on this blog, whether a court of law will enforce an employment-related restrictive covenant depends on the facts and often turns on which state's law will apply. But whether a restrictive covenant will fly in the court of public opinion is a different matter entirely.

Every now and then the media grabs hold of a legal issue and creates a frenzy of coverage. Lately, the spotlight focused on analysis of a confidentiality and non-competition agreement for employees at the Jimmy Johns sandwich shop franchise. In one of the "most read" articles on the *New York Times* website with the catchy headline "When the Guy Making Your Sandwich Has a Noncompete Clause," the writer took the view that the subject of noncompetes for low-paid, front-line workers raises questions not just as to what is legally acceptable, but also what is economically acceptable and morally acceptable. In a quick roundup of other coverage, we found commentary that included an article on Forbes, an item on the Washington Post "wonkblog" and a Huffington Post article that appears to have been the starting point for much of the week's follow-on coverage.

The genesis for all the attention appears to be the *Brunner v. Jimmy John*'s case, a proposed wage and hour class action filed in the U.S. District Court for the Northern District of Illinois in August, case No. 14-CV-05509. An Amended Complaint recently was filed to add allegations that the post-employment restrictive covenants are overbroad and therefore unenforceable. If you want to play "spot the issues" and decide for yourself whether you think the Agreement will pass legal muster, it is at Exhibit A to the lengthy Complaint.

While that case is only in its earliest stages, it stands as a reminder of how a publicly filed complaint can take on a life of its own in the court of public opinion.

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