

Employer Alert: Check Your Non-Compete Agreements— Are They Assignable?

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Recently, the United States District Court for the Western District of Missouri addressed whether non-compete agreements are automatically assignable in an asset purchase. The court found the agreements to be unenforceable on account of the employees who signed them had not contemporaneously assented to their assignment when their employer sold its assets to another company. *Symphony Diagnostic Services No. 1, Inc. d/b/a MobileXUSA v. Greenbaum*, No. 13-4196 (W.D. Mo. March 16, 2015). In *MobileXUSA*, the determinative fact was the agreements did not have an assignment clause allowing an employer to freely assign the agreements to a subsequent company. Because the agreement did not contain an assignment clause the court required a contemporaneous assignment at the time of the asset purchase. The court went to great lengths to distinguish the facts from this case from cases in which the employment agreement expressly permits assignment by the employer.

Employer Take Away: This decision highlights the need for Missouri employers to review their employment agreements to ensure they contain a clauses permitting assignment. Absent such language, employers run the risk that their contractual protections will be unenforceable in the event of a sale, acquisition, or other change in control. In the event agreements do not have an assignment provision employers are encouraged to contact their employment counsel to devise solutions and strategies to cure the defect.