



# DELAWARE

## EMPLOYMENT LAW LETTER

Part of your Delaware Employment Law Service

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### EMPLOYMENT CONTRACTS

## Supreme Court has more good news for employers

by Sheldon Sandler

*A recent U.S. Supreme Court decision has affirmed the validity of forum-selection clauses, which force parties to a contract to litigate disputes in a particular state or court. The decision solidifies provisions in employment contracts that requiredisputes to be settled in the venerable Delaware Court of Chancery.*

### ***What is forum selection?***

Many employers, particularly companies in competitive fields such as sales, use employment contracts to set out the terms of their employment relationships. Frequently, employment agreements contain forum-selection clauses naming the state or the court in which any disputes must be litigated and which state's law will govern. Forum-selection provisions are particularly important if the contracts contain restrictive covenants — agreements not to compete with the employer or solicit its employees, customers, or clients — because those restrictions are valid in some states and invalid in others.

Employers often name Delaware state courts as the exclusive forum for enforcement of employment contracts for several reasons. First, Delaware generally holds restrictive covenants enforceable if they're properly drafted. Second, Delaware is an ideal forum because of the high quality of Delaware courts and the large number of corporations and other entities created in the state. For those reasons, employers may prefer a Delaware forum and name Delaware law as the governing law.

### ***So what's the problem?***

Some courts have refused to enforce forum-selection clauses because another state would be more convenient than the named forum based on the location of witnesses or documents. For example, a multinational corporation may have employees in all 50 states but use a Delaware forum-selection clause to require litigation in the Delaware Court of Chancery. In such cases, the relevant witnesses and documents may be located in New Jersey, and a New Jersey court might decline to honor the contract's provisions.

Fortunately, in a unanimous decision, the U.S. Supreme Court has strongly endorsed enforcement of forum-selection clauses. Although the facts didn't involve an employment dispute, the Court's reasoning will apply with equal force to such disputes.

The case involved a construction contract between firms in Texas and Virginia for work to be performed in Texas. The contract contained a clause naming Virginia as the appropriate forum for any litigation. When the Texas firm filed a lawsuit in Texas, the appeals court refused to enforce the forum-selection clause, explaining that the convenience of the parties justified keeping the case in Texas despite the clause. The Supreme Court reversed that decision.

The Court observed that a forum-selection clause must be "given controlling weight in all but the most exceptional cases. . . . When the parties have agreed to a valid forum-selection clause, a district court should ordinarily transfer the case to the forum specified in that clause. Only under extraordinary circumstances unrelated to the convenience of the parties should a [motion to transfer] be denied."

Significantly, the Court pointed out that regardless of whether the forum-selection clause names another federal court or a state court, the same standard applies. That is, the existence of the clause is to be given great weight. *Atl. Marine Constr. Co., Inc. v. U.S. Dist. Ct.*, No. 12-929 (Dec. 3, 2013).

### ***Bottom line***

Delaware has a specific statute governing choice of law that should be invoked in any forum-selection clause. The law applies to contracts worth \$100,000 or more and sets out the language to be used in a forum-selection clause that will establish the requisite relationship with Delaware. Employers would be wise to consider using forum-selection clauses, especially in agreements with senior-level employees.

You should seriously consider retaining an attorney to draft employment agreements, particularly if your agreements include restrictive covenants or if choice of law is an issue. A poorly drafted employment agreement can lead to unnecessary disputes and drawn-out litigation.

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