

EMPLOYMENT LAW UPDATE

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California Law

*Trial court properly enjoined former healthcare staffing company employee from soliciting employees based on admitted use of confidential information and trade secrets.*

**ReadyLink Healthcare v. Cotton (Cal.App.4<sup>th</sup> Dist., February 14, 2005) 05 C.D.O.S. 1336**

By Jason A. Geller and Kevin D. Whittaker

ReadyLink Healthcare is a licensed healthcare service provider that provides nurses to healthcare facilities and professionals. ReadyLink recruits, interviews and hires nurses as its own employees and then assigns them to its customer healthcare providers. To organize its business efforts, ReadyLink spent a great deal of time and money developing its database of nurses and customer healthcare providers.

In September 2000, ReadyLink hired defendant Jerome Cotton. Upon being hired, Cotton signed an employment agreement, wherein Cotton agreed not to “directly or indirectly hire, provide information to others who may want to hire, solicit, or encourage to leave any employee, consultant, client, agent, independent contractor, or contractor of ReadyLink” for three years after termination of Cotton’s employment. Additionally, Cotton agreed not to “accept employment with any Client or Client Facility to which (s)he may have worked with or for, or have been assigned while an employee of ReadyLink without the prior written approval of ReadyLink” for three years

after termination of Cotton’s employment.

Later, in January 2001, Cotton became a ReadyLink nurse-recruiting agent and signed an additional employment agreement. The additional agreement provided that upon his termination, he was prohibited for three years from soliciting ReadyLink employees or customers; attempting to divert business from ReadyLink; and engaging in any competition with ReadyLink business.

On March 8, 2002, ReadyLink fired Cotton for stealing ReadyLink records, which contained proprietary and confidential information. A search of Cotton’s home and computer revealed that, during his employment, he had misappropriated information from ReadyLink’s database of nurses and customer healthcare providers for use in starting his own nurse staffing company. Upon termination, Cotton signed a declaration acknowledging misappropriation and improper use of ReadyLink confidential and proprietary information; attempting to form his own company in competition with

ReadyLink; and improperly soliciting ReadyLink employees to staff his company. Nevertheless, two weeks later, Cotton started working for a ReadyLink competitor and began recruiting ReadyLink employees.

Thereafter, ReadyLink sued Cotton for disclosing ReadyLink information concerning ReadyLink's finances, customers, employee contracts, payroll practices, and business methodology to his new employer. Additionally, ReadyLink alleged that Cotton illegally solicited ReadyLink employees for positions at his new employer.

The trial court enjoined Cotton from "engaging in any solicitation of ReadyLink Healthcare employees, agents, nurses, or remote recruiters, or anyone under contract with ReadyLink Healthcare or associated with ReadyLink Healthcare; hospitals under contract with ReadyLink Healthcare; and any other healthcare facility or healthcare professional in a business relationship with ReadyLink Healthcare in regard to the nurse staffing business." Cotton appealed.

The Court of Appeal found that overwhelming evidence showed that in soliciting ReadyLink's employees, nurses, and customers, Cotton used trade secret information protected by the Uniform Trade Secret Act. For example, upon his termination, Cotton admitted that he had misappropriated proprietary and confidential information from ReadyLink. Additionally, the evidence showed that even after his termination from ReadyLink, Cotton intended to start his own nursing staffing business in competition with ReadyLink and actively solicited ReadyLink employees to join his new employer until his company became established. Thus,

based on the admitted misappropriation and active solicitation, the Court of Appeal found that it was appropriate for the trial court to issue the injunction enjoining him from soliciting ReadyLink employees. The Court noted that, while former employees generally have the right to compete with their former employers, they must do so lawfully and without stealing the trade secrets of former employers. This would amount to unfair competition.

This case illustrates the importance for California employers to have employees sign enforceable confidentiality agreements that protect trade secrets. Since California has strong laws in favor of competition, employers should consult counsel to ensure that the agreements are compliant with California law and otherwise enforceable.

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