

GIBSON DUNN

Labor & Employment Update

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## Delaware Supreme Court Revives Nationwide Noncompete at Pleading Stage, Reaffirming That Well-Pleaded Allegations Govern Motions to Dismiss

*Payscale Inc. v. Norman*, \_\_\_ A.3d \_\_\_, No. 297, 2025, 2026 WL 774876 (Del. Mar. 19, 2026)

In a significant ruling this month, the Delaware Supreme Court reversed a Chancery Court decision that had invalidated an 18-month, nationwide noncompete agreement at the pleading stage. The decision in *Payscale Inc. v. Norman*, \_\_\_ A.3d \_\_\_, No. 297, 2025, 2026 WL 774876, at \*1 (Del. Mar. 19, 2026), affirms that (a) an 18-month noncompete could be enforceable, especially where that duration is tied to business realities like the length of client contracts; (b) contingent equity awards—like Profit Interest Units (PIUs)—can remain valid consideration in exchange for restrictive covenants; and (c) Delaware courts must credit an employer’s well-pleaded allegations before dismissing enforcement actions based on the ultimate enforceability of restrictive covenants.

*Payscale* is notable because it is among the first rulings to address the Chancery Court’s recent trend of applying heightened scrutiny to the enforceability of restrictive covenants very early in litigation. The Court did not address standards for other early-stage motions like temporary restraining orders and preliminary injunctions, but Delaware courts may look to *Payscale*’s reasoning in addressing burdens, allegations, and evidence in these other early-litigation contexts.

## **Background**

In 2021, Erin Norman rejoined Payscale Inc., eventually becoming a Senior Director of Sales overseeing the western United States. Norman signed incentive equity agreements with Payscale's holding company, Topco, receiving Profit Interest Units (PIUs). At the time of issuance, the PIUs were valued at \$0, but they were structured to vest and potentially gain significant value upon a sale of the company.

In exchange for her PIUs, Norman agreed to an 18-month nationwide noncompete after the date of her separation from Payscale, along with nonsolicit and confidentiality provisions. Norman resigned in December 2023, and, roughly ten months later, Payscale discovered she had joined its direct competitor BetterComp, Inc.

Payscale sued Norman and BetterComp in the Delaware Court of Chancery for breach of contract and tortious interference. Payscale sought a temporary restraining order, which the Chancery Court denied, though the court granted expedited discovery. In the midst of that process, Norman and BetterComp moved to dismiss Payscale's complaint under Delaware Chancery Court Rule 12(b)(6), which the Chancery Court granted. In doing so, the Chancery Court found Norman's noncompete was facially unenforceable because it had a broad geographic (nationwide) and temporal (18 month) scope, the consideration in PIUs Norman received in exchange was "vanishingly small," and the nonsolicit and confidentiality claims were conclusory. Payscale appealed.

## **Opinion & Conclusions**

The Delaware Supreme Court reversed and remanded. It ruled that the Chancery Court misapplied Delaware's minimal pleading burden by improperly drawing factual inferences against the employer to find Norman's noncompete "unenforceable" based on its interpretation of the language in that contract.

- **Allegations in Support of Scope:** The Supreme Court found it was reasonably conceivable that an 18-month nationwide noncompete could be enforceable. The Court emphasized Payscale's specific allegations regarding Norman's senior role, her access to confidential customer-pricing models, and her involvement in company-wide strategic decisions. It also noted that the 18-month duration was tethered to a legitimate business interest, as Payscale had pleaded that its high-value "enterprise" contracts typically run for three years (36 months).
- **Contingent Equity:** The Supreme Court also found the Chancery Court erred by dismissing Payscale's noncompete claim based on what Norman and BetterComp advocated was the "vanishingly small" value of her PIUs. The Supreme Court clarified that the lower court erroneously conflated the legal requirement for consideration in exchange for contract formation with the equitable balancing test used to assess reasonableness of a restrictive covenant. Even contingent consideration—like PIUs valued at \$0 when the contract was signed—is sufficient to form a contract. Weighing the actual value of that consideration against the burden of the restrictive covenant requires a more developed factual record, not a dismissal on the pleadings.
- **Circumstantial Allegations:** The Supreme Court also revived Payscale's nonsolicit and confidentiality claims. Payscale sufficiently pleaded that BetterComp aggressively

recruited former Payscale employees and that Payscale lost at least five high-value enterprise customers to BetterComp shortly after Norman's arrival. The Court noted that without discovery, an employer cannot be expected to plead more particularized facts about a competitor's internal practices.

- **Tortious Interference Claims:** Because the breach of contract claims against the former employee survived, the Court also reinstated Payscale's tortious interference claim against BetterComp.

### **Key Takeaways**

In disputes involving restrictive covenants—and specifically noncompetes—subject to Delaware law, *Payscale* offers the following takeaways:

- **Nationwide Restrictions and Duration Tied to Business Realities:** Restrictive covenant provisions—like a nationwide scope—tied to specific business metric allegations can potentially support reasonableness at the pleading stage. For example, the Supreme Court's approval of Payscale's 18-month nationwide noncompete allegations was due, in part, to Payscale linking that 18-month duration to the typical three-year duration of its "enterprise" customer contracts.
- **Contingent Equity Can Remain Viable Consideration:** Contingent equity, like PIUs, can remain valid consideration for restrictive covenants, even if such equity holds zero value when issued.
- **Circumstantial Allegations Can Be Sufficient:** In some cases, circumstantial evidence—such as the sudden departure of specific key clients immediately following a former executive's move to a competitor—can be sufficient to unlock further discovery.
- **Pleading Standards Govern Early Motion Practice, Rather Than Merits Enforceability:** *Payscale* reminds Delaware courts to decide early-stage motions pursuant to the specific standards and burdens that govern during this stage of litigation—on a motion to dismiss, as in *Payscale*, courts must accept a plaintiff's well-pleaded facts regarding an employer's nationwide operations and protectable interests, rather than deciding ultimate enforceability questions on the merits.

**The following Gibson Dunn lawyers prepared this update: [Christine Demana](#) and [Tommy McCormac](#).**

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