

A software developer left her company to open her own software firm. The developer and her new employees immediately began contacting the company's clients in violation of her noncompete agreement with the company.

The company filed a diversity action in federal court against the developer. The complaint requested damages and preliminary and permanent injunctions. After a hearing at which both parties were present, the court granted a preliminary injunction that prohibited "[the developer] and her employees from contacting any of [the company's] clients pending the outcome of the case." The court also explained why the injunction was issued. The developer and her employees received copies of the preliminary injunction the following day.

Are the employees bound by the preliminary injunction?

- A. No, because the employees are not parties to the lawsuit.
- B. No, because the preliminary injunction violates due process.
- C. Yes, because the employees received actual notice of the preliminary injunction.
- D. Yes, because the preliminary injunction specifically mentioned the employees.

Explanation:

Preliminary injunction

Grounds* Movant establishes that:

- movant is likely to succeed on merits
- movant is likely to suffer irreparable harm in absence of relief
- balance of equities favors movant *and*
- injunction is in public's best interests

Contents Order granting injunction must:

- state reasons for issuance
- reasonably describe prohibited or commanded acts *and*
- state terms specifically

Effect Binds the following persons who receive actual notice of order:

- parties
- parties' officers, agents, employees & attorneys *and*
- anyone in active concert or participation with above-listed persons

*Movant also must provide bond to pay costs & damages if nonmovant was wrongfully enjoined.

A **preliminary injunction** is a temporary court order that commands or prohibits certain actions while the case is pending before the court. It **binds** any of the following persons who receive **actual notice** of it:

- The **parties** to the case
- Those parties' **officers, agents, employees, and attorneys**
- Any person who is in **active concert or participation** with the aforementioned persons

Since the developer's *employees* received copies of the preliminary injunction, they are bound by it **(Choice A)**.

(Choice B) Due process protects persons against unfair deprivation of *life, liberty, or property*. Only *public* employees who are terminable for cause (as opposed to at-will employees) have a property interest in their jobs. And even if the employees here had such a property interest, the injunction's prohibition against contacting the company's clients would not deprive them of that interest.

(Choice D) The employees are not bound merely because they are mentioned in the preliminary injunction. Instead, they are bound because they received actual notice of it.

Educational objective:

A preliminary injunction binds the following persons who receive actual notice of it: (1) the parties, (2) their officers, agents, employees, and attorneys, and (3) any person in active concert or participation with the aforementioned persons.

References

- Fed. R. Civ. P. 65(d) (persons bound by preliminary injunction).

Copyright © UWorld. All rights reserved.