

Buc-ee's Employment Repayment Provision Held Invalid

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A running battle has been waged in Texas regarding a narrow issue of employment law. Can an employer require an employee to "refund" part of their already paid compensation if they leave the employment of the employer? Retention or incentive pay provisions are not uncommon. They are intended to attract and retain good employees. But what if part of the employee's "normal" compensation is designated as "retention pay" and required to be repaid if the employee leaves? There is now an answer from the 14th Court of Appeals, but not the one Buc-ee's had anticipated.

Buc-ee's, a well-known chain of convenience store/gas stations, and which was recently voted the "best gas stations in the United States," has been embroiled in this dispute for years with a former employee who chose to leave prior to the expiration of the required employment period. Many in the industry have closely monitored the case, hoping for clarification of whether such a structure was enforceable before adopting the same or a similar employment strategy.

According to the court filings, in 2009, Buc-ee's hired Kelley Rieves as an assistant manager, at an annual salary of \$55,000, which is what Rieves indicated she needed to earn in order to convince her to leave her then current employer, TGI Friday's. Buc-ee's agreed to the salary requirement, but made Rieves sign an employment agreement, one term of which was that she would be considered an at-will employee. Another term was that her compensation would be split between an hourly rate of \$14.00 (well above minimum wage), and a flat monthly amount of \$1,528.67. The employment contract provided that the flat monthly pay constituted "additional compensation," and that if she failed to stay at least 5 years, or failed to give 6 months notice prior to leaving even after the required 5 year term, regardless of the reasons for leaving, she would be required to repay Buc-ee's the "additional compensation" portion of her compensation.

In 2010, Buc-ee's required Ms. Rieves to sign a second employment agreement, which was a slightly revised version of the same concept. The agreement provided that Ms. Rieves would remain an at-will employee, and would receive a weekly salary of \$862.75. In addition, the agreement contained a "retention pay" provision, which provided for an up-front payment of \$1,000.00, and a "monthly retention payment" representing a portion of the "net profits" earned at her Buc-ee's location. The agreement required her to work a minimum of 4 years and to give 6 months notice of termination of employment after the expiration of the minimum period; otherwise, she would be required to repay the "retention pay" if she quit or was fired for any reason. Ms. Rieves quit after 3 years.

One year later, Buc-ee's demanded that the former employee repay the "additional compensation" she had received during her employment under both the 2009 agreement and the 2010 agreement, in the amount of \$66,720.29, plus interest and attorney's fees.

Rieves responded by filing a lawsuit, seeking a declaratory judgment that the contractual repayment provisions were invalid under Texas law. Buc-ee's filed a counterclaim, seeking payment. The trial court granted summary judgment in favor of Buc-ee's, and the former employee filed an appeal to the Fourteenth Court of Appeals.

The Court of Appeals recently ruled in favor of Ms. Rieves. The Court reversed the summary judgment in favor of Buc-ee's and rendered judgment in favor of the former employee, finding that the "additional compensation" and "retention pay" provisions in the two employment agreements were each unenforceable restraints of trade. The Court ruled that the provisions "lacked reasonable limits and imposed a substantial penalty on the exercise of an at will employee's right to quit her job." Buc-ee's argued that the provisions were forfeiture provisions, not a restraint of trade. The Court rejected this argument, finding that the employee was not forfeiting compensation, but was being required to repay money already paid as compensation. The Court relied upon the Free Enterprise and Antitrust Act and prior Texas Supreme Court rulings in concluding that "covenants limiting employees' professional mobility are unlawful restraints of trade unless they fall within the exception created by the Covenants Not to Compete Act. The Covenants Not to Compete Act require that the covenant contain limitations as to time, geographic area and scope of activity restrained. The Court found that these same standards applied to damage provisions that impose a severe economic penalty on a departing employee, and that such provisions were not met in these agreements.

The Court also ordered Buc-ee's to pay the employee's attorney's fees, and remanded the case for a determination of the amount of reasonable attorney's fees.

A copy of the opinion is available here: <https://law.justia.com/cases/texas/fourteenth-court-of-appeals/2017/14-15-01061-cv.html>

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