



## Court Clarifies Boundaries of Post-Employment Restrictions

On June 13, 2025, the Massachusetts Supreme Judicial Court (SJC) issued a decision in *Miele v. Foundation Medicine, Inc.* that reinforces the distinction between noncompetition and nonsolicitation agreements under the Massachusetts Noncompetition Agreement Act, G.L. c. 149, § 24L (the “Act”). The court concluded that a forfeiture clause triggered by a former employee’s breach of a nonsolicitation agreement does not convert that agreement into a “forfeiture for competition agreement” subject to the Act’s strict requirements.

This ruling offers some welcome clarity for Massachusetts employers who include post-employment restrictive covenants in severance or transition agreements, particularly those concerned about how to enforce nonsolicitation provisions without running afoul of the Act.

Susan Miele, a former executive at Foundation Medicine, Inc. (FMI), had entered into both a restrictive covenant agreement at the outset of her employment and a transition agreement upon her separation in 2020. The restrictive covenant included a standard employee nonsolicitation clause, which prohibited her from recruiting FMI employees for one year after her departure. The later transition agreement incorporated that nonsolicitation clause and added a forfeiture provision: if Miele breached any agreement with FMI, she would forfeit remaining severance payments and be required to return those already made. FMI ultimately paid Miele approximately \$1.2 million.

After leaving FMI, Miele joined Ginkgo Bioworks and allegedly solicited several FMI employees. FMI ceased her severance payments and demanded repayment. Miele sued FMI for breach of contract and argued

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### Firm News



Marc Laredo

Marc Laredo was named to the Legal 500’s Boston City Elite Rankings for Commercial Litigation



Matthew Kane

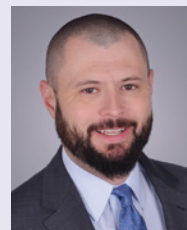
Matt Kane presented at a BBA webinar, “State and Federal Interlocutory Appeals in Massachusetts”



Darshana Indra

Darshana Indra presented at a BBA webinar, “Massachusetts Pay Transparency Law”

Darshana also served as co-chair of the Women’s Bar Association Women of Color Committee at its 2025 *Pioneering Women of Color Award Ceremony*



Brendan Cox

Brendan Cox served as faculty for an MCLE program, “Handling an Assault & Battery Case”

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that the forfeiture clause violated the Noncompetition Agreement Act because it imposed financial penalties based on post-employment conduct.

The Superior Court initially sided with Miele in part, holding that the forfeiture provision rendered the nonsolicitation clause a “forfeiture for competition agreement” — a type of post-employment restriction covered by the Act. Under that reasoning, FMI’s forfeiture clause would be unenforceable because it

Miele sued FMI for breach of contract and argued that the forfeiture clause violated the Noncompetition Agreement Act because it imposed financial penalties based on post-employment conduct.

did not meet the Act’s strict procedural and substantive standards for noncompete agreements.

FMI sought direct appellate review, arguing that the Legislature expressly excluded nonsolicitation agreements from the scope of the Act and that attaching a forfeiture clause does not change that characterization.

The SJC agreed with FMI and reversed the Superior Court’s partial grant of judgment in Miele’s favor. The court emphasized that the Act expressly excludes nonsolicitation agreements from the definition of noncompetition agreements. Since forfeiture for competition agreements are a subset of noncompetition agreements, the court reasoned, they too must exclude nonsolicitation provisions. Allowing a forfeiture clause to change the character of the underlying agreement would, in the court’s view, effectively undermine the Legislature’s clear exclusion of such provisions from the Act’s coverage.



The court also rejected Miele’s attempt to reinterpret “competitive activities” in a way that would sweep solicitation back into the Act’s coverage. To do so, the court said, would contradict the plain language and would render the statute internally inconsistent.

For employers, this decision reinforces the legal distinction between noncompetition and nonsolicitation agreements in Massachusetts. While the two types of provisions may serve similar business interests, they are treated differently under the statutory framework. Employers incorporating nonsolicitation clauses into severance or other post-employment agreements may find some reassurance in the court’s conclusion that doing so, even with an accompanying forfeiture mechanism, does not implicate the Act.

At the same time, the case serves as an important reminder of the scrutiny that restrictive covenants can invite, especially where severance pay or other post-employment benefits are conditioned on continued compliance. Companies reviewing or updating such agreements should consider how these provisions are structured, what remedies they contemplate, and whether the agreements are likely to withstand legal challenge in light of evolving interpretations of the statute.

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