

Are Your Non-Compete Agreements Enforceable?

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With unemployment rates in Michigan still well above the national average, non-compete agreements are facing increased scrutiny. Michigan courts are more likely than ever to find deficiencies in the agreements and decline to enforce them. So even though an individual signed a document stating he or she would not go to work for the competition, lawyers and judges pick away at the documents until they find a reason to reject them, thereby allowing the individual to remain employed by the competition.

While you may read your employment agreements and understand what you intended, a judge may not. In two recent cases, circuit courts examined non-compete agreements in light of entire employment contracts. The cases show that terms buried within a separate portion of an employment agreement might give the court a reason to decline to enforce your non-compete agreement.

Specifically, courts have declined enforcement because the agreements were written in an inconsistent manner or because the employee's job title changed after signing the agreement.

Inconsistency

In one case, the text of a non-compete agreement stated that it applied "upon termination," but failed to define "termination." Elsewhere in the employment agreement, "termination" described an event where the employer fired the employee prior to the end of the term stated in the agreement.

The employee declined to sign a new employment agreement and immediately went to work for a competitor. The employer argued that "termination" was meant in a plain and ordinary way and included any ending, not just being fired. But because of the way "termination" was used elsewhere in the employment contract, the court held that the non-compete agreement simply did not apply because the employee was not fired. The employee was free to compete with his former employer.

Change In Position

In another case, an employee signed an agreement that specifically mentioned his entry-level job title and did not contain any provision for future promotions. The non-compete agreement within the employment agreement was not specifically limited to any job title; rather, it stated that it would remain in effect for the "duration of [the employee's] employment."

Later, the employee was promoted to a new job with a new title, but the employer did not require him to sign a new employment agreement. After the employee was terminated, the employer sought to enforce its non-compete agreement. However, the court read the non-compete agreement in light of the whole employment agreement, and found that it

applied only to the entry-level job. Since there was no valid employment agreement or non-compete agreement for the employee's work in his new position, he was free to compete with his former employer

Review Your Covenants

Restrictive covenants, including non-compete agreements, are entered into for a very legitimate reason: to protect your business interests. Don't let inconsistency or vague language result in an unfavorable court ruling. Reread your restrictive covenants – closely. Or better yet, have an experienced labor attorney review them. We at Warner Norcross & Judd have extensive experience with non-compete agreements and can help you avoid pitfalls.