

Are Your Non-Competition Agreements Enforceable?

By: Beth Lincow Cole

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Let's debunk the myth. I have heard companies often say "non-competes are not enforceable anyway." Covenants not to compete, or non-competition agreements, prevent your employees from going to work for a competitor for a specified period of time.

They are designed to protect sensitive company information and to preserve valuable customer relationships when an employee leaves the company.

If you have a non-competition agreement with your employee, you can demand that the employee abide by its terms. If the employee fails to do so, you ask the court to enforce the agreement, and you may also be able to sue for damages arising from the employee's violation of the agreement.

However, none of this is possible if the agreement is not valid.

In order to be considered valid, a non-competition agreement must:

- Be supported by consideration at the time it is signed;
- Protect a legitimate business interest of the employer; and
- Be reasonable in scope, geography, and time.

With respect to consideration, the employee must receive something of value (consideration) in exchange for the promise to refrain from competition. If the agreement is signed at the start of the employment relationship, the employment itself will be sufficient consideration. However, if an employee signs a non-competition agreement after commencing employment, in many states, the employee must receive something else of value in exchange for the promise such as a promotion (continued employment alone is insufficient in many states; although, continued employment is generally sufficient consideration in some states such as New Jersey).

With respect to legitimate business interests, the desire to preserve goodwill and protect confidential information have both been found to support non-competition agreements.

With respect to reasonableness, the court will balance the need to protect the employer's legitimate business interests with any burden that enforcement of the agreement would place on the employee. This is the most important consideration, and it is often fact intensive. The court will make sure that the agreement is not too broad in terms of scope, geography, and time.

Jump start your action items in 2011. Many companies want to put in place an employee handbook but have not done so yet for monetary reasons. For companies in PA and NJ contact

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About Beth Lincow Cole

Employment Law Attorney Beth Lincow Cole has skillfully helped business owners and managers head off the unwanted and unnecessary lawsuits that can arise in the workplace. Drawing on her successful legal experiences both in and outside the courtroom, Beth Lincow Cole understands how to protect employers. By developing solid pre- and post-employment procedures for her clients, she assures that they are legally protected.

Beth Lincow Cole has worked for large regional and national law firms, focusing solely on employment issues, on behalf of management within a wide range of industries. Whether you are a start up company with basic questions about personnel files or a larger company with questions about an employee's Family Medical Leave, Beth Lincow Cole can help. Drawing on her experiences, she counsel's companies in the following practice areas:

- Defense in administrative agency matters such as before the DOL, EEOC, PHRC or NJDCR
- Department of Labor Audits
- Discrimination
- Downsizing/Reduction in Force
- Drug Testing
- Employment Contracts and Severance Agreements
- Employment Law Compliance
- FMLA and other family leave laws
- Independent Contractors/Contingent Workforce

Please contact the firm to find out how the Law Office of Beth Lincow Cole can protect your company.