



May 8, 2014

## No Non-Compete = Public Ridicule?



We all know that a well-drafted non-compete agreement is necessary to protect a company's customer relationships and confidential information when an executive jumps ship. What you might not

have considered is that an employment agreement with inadequate post-termination restrictions might subject a company to criticism by shareholders or others. In the instance described in a [piece](#) in The Globe and Mail (Vancouver), an executive compensation expert blasts the B.C. Lottery Corporation for failing to limit the post-employment activities of the former CEO of the lottery, who moved from what is described as a "highly sensitive" government position to a private company developing a Vancouver gambling casino.

[Read the full article](#) on Burr's Non-Compete & Trade Secrets Blog. For more information, contact [William "Chip" Collins, Jr.](#) at 404-685-4266 or [wcollins@burr.com](mailto:wcollins@burr.com).

## 77 Burr & Forman Attorneys Selected Among *Alabama Super Lawyers* and Rising Stars for 2014

In addition to the six Burr & Forman attorneys selected as [2014 Georgia Super Lawyers and Rising Stars](#), 52 Burr attorneys have been included among *Alabama Super Lawyers* for 2014, and an additional 25 attorneys are recognized as "Rising Stars" by the publication.

Eight attorneys from the firm's [Labor & Employment Group](#) were named as *Super Lawyers*: [John J. Coleman, III](#); [Marcel L. Debruge](#); [Ashley H. Hattaway](#); [Michael L. Lucas](#); [Bryance Metheny](#); [Dent M. Morton](#); [Frank McRight](#); and [Bill Wasden](#).

Five Labor & Employment attorneys were

## Headlines

- [Disability Policies and Forms May Violate ADA, EEOC Says](#)
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## News Briefs

### [Disability Policies and Forms May Violate ADA, EEOC Says](#)

The Equal Employment Opportunity Commission released an informal discussion letter that may prompt some employers to reexamine their own policies and forms related to reasonable accommodation requests to ensure the documents comply with the Americans with Disabilities Act. The EEOC explains why particular statements and questions in the sample disability accommodation policy and related forms may violate the ADA.

(Source: BNA, 2014-05-05)

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### [Court Draws the Line Between Attendance and Physical Presence](#)

Attendance at work is an essential part of many jobs, but it can't be assumed to mean an actual presence at a physical site, the Cincinnati-based 6th U.S. Circuit Court of Appeals recently found in an Americans with Disabilities Act reasonable accommodation case. The action was brought by the Equal Employment Opportunity Commission, on behalf of a Ford Motors resale buyer who was diagnosed with Irritable Bowel Syndrome.

(Source: ABA Journal, 2014-04-24)

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### [Using Medical Condition in Hiring Has ADA Implications, EEOC Says](#)

Two recent victories for the Equal Employment Opportunity Commission should remind employers that rejecting a job applicant over a medical condition, even when the condition appears directly related to job performance, can expose the employer to serious legal consequences under the Americans with Disabilities Act. The court acknowledged that the ADA permits conditional offers of employment pending the results of medical examinations, but stressed that examination results may only be used in accordance with ADA guidelines.

(Source: BenefitNews.com, 2014-05-01)

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### [eBay to Pay \\$3.75M to Settle Federal No-Poaching Antitrust Case](#)

The auction site eBay has settled a federal antitrust case that accused it of having a secret deal with Intuit not to try to hire each other's employees. The deal, announced by the Justice Department, follows the pattern of the department's 2010 settlement against Google, Apple, Intuit and other Silicon Valley companies over similar accusations.

(Source: The New York Times, 2014-05-01)

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### [EBSA Says Employers Still Need to Send Out COBRA Notices](#)

recognized as Rising Stars; [Ronald W. Flowers](#); [Amy Jordan](#); [Kristin Taylor Parsons](#); [Anna L. Scully](#); and [Katy Willis](#).

Click [here](#) to view the full list, by office, of Burr attorneys named to 2014 *Alabama Super Lawyers* and Alabama Rising Stars.

2014 *Super Lawyers* and Rising Stars lists for Florida, Mississippi and Tennessee will be released soon. *Super Lawyers* can be found online [here](#), where lawyers can be searched by practice area and location.

### Labor & Employment Law Breakfast Briefings in Orlando and Tampa

Burr & Forman will host a Labor & Employment Law Breakfast Briefing on Tuesday, June 3rd in Orlando, Florida and Wednesday, June 4th in Tampa, Florida. Program topics include: Why worrying about the NLRB in a nonunionized setting is necessary; ADA/FMLA/Workers Compensation; Leave Management; Considerations and alternatives for Non-Compete Litigation; Making the hiring process work; and FLSA Update.

If you are interested in attending, or for more information, contact [Matt Bragiel](#).

### Forrest Latta Joins Claims and Litigation Management Alliance



Mobile-based partner [Forrest S. Latta](#) has been named a member of the Claims and Litigation Management Alliance (CLM). CLM is an alliance of insurers, corporations, and their attorneys.

Selected attorneys are extended membership by invitation only, upon nomination by a CLM Fellow and a peer admission review. [Read the full story](#).

### Defending the Insurer's Deposition for Breach of Contract or Bad Faith

[Forrest S. Latta](#) recently spoke at the 2014 DRI Life, Health, Disability & ERISA Claims Seminar held April 30-May 2, 2014. The topic of his presentation was "Defending the Insurer's Deposition for Breach of Contract or Bad Faith". For more information about DRI, click [here](#).

Employers may still have to send COBRA health coverage continuation notices to departing employees. A revised model notice will mention the existence of the new Patient Protection and Affordable Care Act public exchange system, but Employee Benefits Security Administration intends to continue to require employers to send the notices and offer access to COBRA coverage.

(Source: Life Health Pro, 2014-05-02)

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### Congress to Examine NLRB's Decision on College Football Unionization

Congressional interest in the current state of college athletics will take another step forward when a House committee conducts a hearing to examine the recent decision by a regional chairman of the National Labor Relations Board to allow college football players at Northwestern University to unionize.

(Source: USA Today, 2014-05-02)

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### Despite Skills Gap, Few Companies Interested in Apprenticeships

Ask CEOs and corporate recruiters whether they're finding the workers they need, and they'll lament about a skills gap that threatens productivity and growth -- not just in their companies but in the economy at large. Yet employers and state legislators have been decidedly lukewarm about a proven solution to the problem: apprenticeships.

(Source: The Wall Street Journal, 2014-04-27)

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