

Could a Former Employee Walk Out the Door With Your Clients?

by Christine M. Vanek on August 29, 2012

Non-competition agreements prohibit former employees from working for a competitor for a stated period of time. Therefore, they are valuable for protecting confidential company information and preserving valuable client relationships when an employee leaves the company.

New Jersey courts, however, typically do not like restraints on trade. Therefore, to survive judicial scrutiny, non-competition agreements must be reasonable in both scope and duration.

To make this determination, courts will generally address the following questions:

Is the agreement necessary to protect the parties' legitimate interests? New Jersey courts have routinely held that trade secrets, client lists, and other proprietary business information qualify as legitimate interests.

Will the agreement impose an undue hardship on the former employee? New Jersey courts will consider a number of factors, including whether the employee terminated the employment relationship, the ability of the employee to find other suitable work, and the restrictions imposed by the agreement.

Does the agreement conflict with the interests of the public? New Jersey courts will also take public policy considerations into account. This may include weighing the employer's need to protect its business in a particular industry against the public's need for the employee's services.

As with any agreement, a non-compete must be supported by valid consideration. This may include an employment offer, an offer of continued employment, and a change in employment terms.

Given the scrutiny non-competition agreements often face, it is imperative to make sure they are carefully drafted to ensure they will be enforceable when you need them. If you have any questions about non-competition agreements or would like to discuss this topic, please contact me, Christine Vanek, or the Scarinci Hollenbeck attorney with whom you work.