Schaffer Law, LLC
Labor and Employment Law

Making Non-Competes and Other Restrictive Covenants Enforceable

October 2009

Contrary to the popular belief of many, non-compete agreements and other restrictive covenants are enforceable, when properly drafted. Non-compete agreements typically prevent an employee from competing with their employer during the term of employment and for some period following termination. The agreement must be narrowly tailored to protect legitimate business interests, for a reasonable duration, within a reasonable geographic scope. It must also not unfairly restrain an employee's opportunity to work in his occupation. These factors will differ significantly based on the employer's business and the employee's duties. For instance, courts have found that a single hair salon may enforce a non-compete that prevents its stylists from providing similar services within a 10 mile radius for one year following termination.

In contrast, a major corporation seeking to prevent its VP of sales from competing may be able to justify a nationwide ban for two years given the time and expense needed to develop more sophisticated customers. In seeking nationwide protection, however, the firm may have to list the specific competitors it believes are directly in competition and the actual products and services the former employee is prevented from selling.

A less restrictive, but important layer of protection is also available through a non-solicitation agreement. Such agreements permit a former employee to work for a direct competitor, but prevent him from soliciting clients and/or employees of the former firm. Again, any restrictions must be for a reasonable period needed to protect the employer's legitimate

business interest. In large companies the agreement may have to be limited to clients and/or employees the former employee had actual contact with.

Finally, confidentiality agreements protect the disclosure of any proprietary information for any purpose for as long as the information is not released by the company itself. Proprietary information can include all business plans, strategies, financial information, customer lists, and other information companies uniquely develop and take pains to protect from unintentional disclosure. Even in the absence of confidentiality agreements many states, including Connecticut, have trade secrets acts that protect much of the same information by statute.

While employers may be interested in drafting restrictive documents for their own protection, it is equally necessary to ask applicants if they are bound by any restrictions prior to an offer being made. This will prevent the new employer from being sued for intentional interference with contractual relations or other causes of action.

Because of the individualized nature of restrictive covenants, and the burden on the party seeking to enforce them, legal counsel should be used to draft documents that will stand up to legal scrutiny.

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