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News From the Firm

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Message From Chris....

Employers: we're talking about non-compete agreements this month from a different vantage point than you ordinarily see. See below (and don't forget to click on my Facebook or YouTube links below to also see my short video on this material).

Non-Competes

There's an old Italian phrase which I can't pronounce, it goes something like this: "...*may you have many employees.*" It's intended as a double-meaning to say that "...while it's great to have so much business that you need a lot of employees, the task of managing/dealing with all of your employees can be frustrating and a lot of work." Go figure.

A lot of employers have been disheartened to learn that the enforcement of a non-compete agreement upon their departing employees is frowned upon (and understandably so, after all, case law, and the public policy behind such case law, guards against the overly broad, untailed and unreasonable restriction upon a departing employee's future practice of their profession). *So, what can employers still benefit from having a non-compete agreement?*

What isn't allowed? Employers can't prevent a departing employee from continuing to do what they do within so many miles of the previous employer (i.e., radius restrictions); nor can previous employers prevent employees from carte blanche working their trade for a certain period of time after their departure (i.e., time restrictions). In other words, provided the statute discussed below is followed, the departing employee could leave and simply walk across the street and immediately start working for another employer (or go into business for themselves).

What is allowed? The relevant statute reads as follows: "A person who makes an agreement with an employer, whether in writing or verbally, not to compete with the employer after the employment relationship has been terminated, shall be permitted to engage in the same business as that conducted by the former employer... as long as the former employee ***does not directly solicit the sale of goods, services*** or a combination of goods and services ***from the established customers of the former employer.***" **So departing employees can't directly engage/solicit existing customers of the employer after they leave that employer.**

What do employers most often misunderstand about non-competes? Employers often write into their non-competes that the employee can't solicit business from existing customers of the employer for **1, 2 or 3 years**. This time element ***isn't a requirement that must be addressed in the non-compete***.... If you look above, you don't see any mention of a time limitation. If an employer wants to provide for one, that's kind of the employer, but not required to make the non-compete enforceable.

What is something employers could do to further help with the enforceability/palatability of their non-competes? Quit calling them "non-competes" in their

employment agreements for starters.... Instead, entitle the concept (to be written within the employment agreement) something more in alignment with the statutory protection which is still actually afforded to employers. Something like: “No Direct Solicitation of the Established Customers of the Employer After Termination of Employment.”

What My Clients Are Saying

“Just a note to let you know how much I have appreciated your help in the past with lease preparation and certain lease particulars that the lay person may sometimes not be familiar with. You have demonstrated a good balance of getting past certain points of law that when considering the lease in its entirety, have a tendency to slow the deal process. As I continue to do more business with larger companies, especially public companies, your knowledge of what is relevant and what is not is of great benefit. I also value you not interjecting yourself in the business points of a transaction except when appropriate. I trust that we will be doing business together for many years to come.”

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