What is a Non-compete Clause/Agreement?

A **non-compete clause (NCC)/agreement (NCA)** (or covenant not to compete (CNC)) is an arrangement used to protect a company from a leaving employee. Specifically, it is used by an employer to prevent an employee from using valuable knowledge or information gained during their employment against the employer in a new job with a competitor or like business.

How does an Employer Use a Non-Compete?

Typically, as a new employee comes onboard they sign various work agreements that specify what their role. If the employee is in an important position where they will gain access to trade secrets, confidential information, and the like they are made to sign a NCC. This is to help the employing company protect itself should that employee ever leave, as the leaving employee could use internal knowledge against the former employer by going to a direct competitor. | *Example: Company A has a secret recipe for pineapple soda, and Company B cannot replicate it. Company A hires a soda mixer to produce batches of the soda. The mixer learns the recipe, leaves Company A for Company B, and brings the knowledge of the recipe, This would damage Company A's competitive advantage. If Company A made the mixer sign a NCC the mixer would be prevented from joining Company B.*

Are there Limitations on Non-Competes: Be Reasonable

Many times employers create NCAs that are too broad and when read, seem like it would be impossible for the former worker to seek any employment in the field they worked in for the company. However, since this is a contract known as a restrictive covenant, a NCA's enforceability is largely dependent on its reasonableness: courts will determine reasonability on **3 factors: (1) length of time; (2) geographical scope; and (3) how broad the restriction is on the activity**. So, when drafting an agreement you could be too broad in your restrictions, and therefore unenforceable or make it too narrow, which would allow the employee to work for a competitor with your valuable knowledge.

What Can an Employer do Against an Employee that Violates a Non-Compete?

Employers with reasonable restrictions typically enforce their NCAs through court order in the form of temporary restraining and/or injunctions. If the former employee violates an order, they can be found penalties (and possibly incarceration). Often employers will try to recover money damages by showing lost profit. Lastly, a court may add the amount of time the former employee was found in violation of the NCA to the agreement, thereby in keeping the duration intact. Additionally, if the new employer induced the employee to leave or is taking advantage of protected knowledge the company may sue them as well.

Protect your company's sensitive information by having an attorney draft a reasonable non-compete agreement for your worker documents!

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