

Biz Contract Term EXPLORED: Non-compete Clause or Covenant Not to Compete

Introduction/Definition

A non-compete clause (otherwise known as a covenant not to compete) is a term used in contract law whereby one party (usually an employee) agrees not to pursue a specific similar profession or trade in competition against another (usually an employer) for a certain period of time within a certain geographic area.

Points to Consider

1. Generally courts have held that, as a matter of public policy, an individual cannot be barred from carrying out a trade EXCEPT to the extent that it is necessary to protect the employer. Under English common law, restraints of trade were unenforceable for good reason---you want a work force.
2. There is no implied covenant not to compete; make sure the language is such that this provision is enforceable.
3. Covenants must be narrow in SCOPE, TIME and LOCATION. This is going to vary from case to case but Courts won't enforce broad provisions like "Employee Y cannot work in Georgia for the rest of her life doing anything remotely related to retail services."

In GA...

The general rule for contracts made BEFORE July 1, 2010 is that Georgia does not "blue pencil" covenants not to compete. This means if a covenant not to compete is held to be overly broad in ONE area, such as location, the WHOLE PROVISION IS UNENFORCEABLE, even if the other language is reasonable.

The Georgia Legislature changed this in 2010 so that contracts made after July 1, 2010, judges are allowed to modify either the scope, location or term of a non-compete that otherwise would be totally invalid.

My Advice

Even though a judge can now modify a covenant not to compete without throwing out the whole provision, it is better YOU, as the business owner, be able to decide how you want your provision to read rather than a removed third party. To do this, however, will require you to retain an attorney that understands the legal case law that determines if a provision is likely to be struck down or considered too broad.

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