

## **Non-Compete Clauses in Employment Agreements**

**From established companies who hire high level executives to start-ups, from insurance brokers to financial services providers, more and more employers are requiring new employees to enter into employment agreements which contain non-compete provisions. The purpose of these non-compete provisions is simple: it prevents employees who are terminated or leave their job of their own volition from using such things as trade secrets, confidential information including customers lists, customer data and goodwill developed by their employer in their new employment or in a start-up business which they have established. Furthermore, a non-compete prevents a former employee from gaining an unfair competitive advantage that he/she would not otherwise have but through working with his/her former employer.**

**To be enforceable, non-compete language should be limited in:**

- Duration;**
  - Geographic Area; and**
  - Scope.**
- 1. Duration: When looking to enforce the term of a non-compete courts look to see if the time period is reasonable in relation to the industry at issue. The reasonableness of the time restriction is fact specific. Massachusetts courts have regularly enforced one to two year agreements.**
  - 2. Geographic area: To be enforceable an employer should consider limiting the geographic reach of the non-compete and consider limiting it to the area in which the employee provides the bulk of the services that were rendered to a client or customer. For example, if an employee is acting as a salesman concentrating in western Massachusetts a provision restricting the employee**

**from offering similar services throughout the United States will likely not be enforceable. Conversely, if a financial advisor has a broad client base which spans across the United States, a restriction that prevents him/her from competing throughout the country could be deemed reasonable.**

- 3. Scope: This is one of the most important aspects of a non-compete provision. Courts will only enforce a non-compete provision if the employer is seeking to protect a reasonable business interest which is in line with the scope of services that the employee is providing to clients. However, courts will not prevent a person from using his/her general knowledge, skill or experience acquired during his/her employment. Reasonable business interests include, but are not limited to, such things as: pricing, customer lists, sales and marketing strategies and at times specialized training that an employee receives during the course of employment.**

**Lastly, in determining the enforceability of a non-compete, courts will often look to see if there is a “material change” in the employee’s duties and responsibilities since the employment agreement containing the non-compete provision was executed. If a material change in employment has occurred from the time the employee initially executed the employment agreement a number of courts have held the provision unenforceable.**

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**Wilchins Cosentino & Friend LLP routinely drafts and reviews employment agreements for its clients. Please feel free to contact us at (781) 235-5500 to discuss how we may assist you.**

