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Noncompete Agreements – Do's and Don'ts

Noncompete agreements are utilized to protect employers from losing valuable trade secrets and employees. While noncompete agreements can be an effective way to protect your business's trade secrets, it must be kept in mind that the legal system places a high value on a person's right to earn a living. California statutes invalidate noncompete agreements except in very limited circumstances and in Virginia a Supreme Court decision has made enforcement of noncompete agreements even more difficult (*Omniplex World Services Corp. v. U.S. Investigation Services*, 270 Va. 246, 618 S.E. 2d 340 – 2005)

So what are some tips on crafting enforceable noncompete agreements?

Have a good business reason – Noncompete agreements should not be established simply to punish an employee for leaving the company. They need to be designed to protect trade secrets or a customer base. You need to assess whether the employee is so valuable and whether you have or will have spent so much time and money on training that losing him or her will damage your business or whether they have access to important information you do not want revealed to a competitor.

One size does not fit all – Do not use a form noncompete agreement. Carefully draft your agreement to protect the legitimate business interests as applied to each individual employee. If you are selective about the employees asked to sign noncompete agreements you are likely to have greater success in enforcing it.

Provide a benefit to the employee – What does the employee get out of signing your noncompete agreement? An offer of a job? A raise or bonus? It cannot be viewed as only a penalty on the employee!

Be reasonable – To be reasonable the noncompete agreement can not last too long (six months to two years are generally considered reasonable), can not cover too wide a geographic area, and cannot prohibit an employee from engaging in too many types of businesses that may or may not appear to infringe on your business area.

If you are presently drafting a noncompete agreement or are having issues with enforcing the ones you have we suggest that you contact legal counsel.