



Protect Your Business From Poachers!



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Non-Competition Provisions

- ◆ Do not rely on your Handbook
- ◆ Enforceable against who?
- ◆ Focus on protecting legitimate business concerns



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Non-Competition Provisions

- ◆ Defining your business
- ◆ Restricted activities
- ◆ Geographic restriction
- ◆ Temporal restriction



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Non-Competition Provision

Employee covenants and agrees that, for so long as Employee is employed by the Company and for a period of two (2) years thereafter, Employee will not, individually or on behalf of any person, firm, partnership, association, business organization, corporation or other entity engaged in the “Business” (as defined above), engage or participate in any activity of the type conducted or provided by the Employee for the Company within two years prior to termination; provided that the restrictions set forth in this section shall only apply within a 100 mile radius of the Company’s office located at

_____.



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Non-Solicitation of Customers

- ◆ You risk going too far if
- ◆ Material contact (next slide)
- ◆ Geographic restriction?



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Material Contact

- ◆ Was company's representative;
- ◆ Coordinated or supervised business;
- ◆ Obtained confidential information about customer;
OR
- ◆ Earned compensation, commissions or earnings
within last two years



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Non-Solicitation of Customers

- ◆ Temporal restriction
- ◆ What if the customer calls the former employee?
- ◆ Social media postings



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Non-Solicitation of Customers Provision

Non-Solicitation of Customers. Employee agrees that, for so long as Employee is an employee of the Company and for a period of two (2) years immediately following the date Employee's employment with the Company ceases (the "Non-Solicitation Period"), Employee will not, on Employee's own behalf or on behalf of any person, firm, partnership, association, business organization, corporation or other entity solicit, or attempt to solicit, directly or by assisting others, any business from customers of the Company, or any representative of any customers of the Company, for the purpose of providing any product or service competitive with those provided by the Company in the Business (as defined below) within two years prior to Employee's termination; provided that the restrictions set forth in this section shall apply only to current and actively sought prospective customers of the Company, or representatives of current and actively sought prospective customers of the Company, with whom Employee had Material Contact (as defined below) during the Employee's employment with the Company.



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Non-Solicitation of Employees

- ◆ Prevents the raiding of your company by a former employee
- ◆ Consider limiting the scope
- ◆ Temporal restriction
- ◆ Damages



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Non-Solicitation of Employees Provision

Employee agrees that for so long as Employee is employed by the Company and for a period of two (2) years thereafter, Employee will not call upon, solicit, recruit, or assist others in calling upon, recruiting or soliciting any person who is an employee of the Company and with whom Employee had contact or became aware of by virtue of Employee's employment with the Company, for the purpose of having such person work for any person, corporation, association, entity, or business (other than the Company).



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Issues

- ◆ What is adequate consideration?
 - Or ancillary to an otherwise enforceable agreement
- ◆ Employee is terminated
- ◆ Tolling
- ◆ Reformation, blue penciling, and the Rule of Reasonableness
- ◆ Choice of law/venue



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Protecting Confidential Information

- ◆ Do not rely on your Handbook
- ◆ Non-Disclosure or Confidentiality Agreements
- ◆ Confidential information v. trade secrets



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Trade Secret Defined

Information, including a formula, pattern, compilation, program, device, method, technique, or process that:

Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.



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Enforcing the Agreement

- ◆ Letter writing
 - Consider the new employer

- ◆ Emergency relief

- ◆ Proving damages



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State Laws

◆ Ohio

◆ Texas

◆ California



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Ohio

- ◆ Rule of reasonableness
- ◆ At-will employment is sufficient consideration
- ◆ Reformation



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Texas

- ◆ Rule of reasonableness

- ◆ Must be ancillary to an otherwise enforceable agreement

- At-will employment is not sufficient consideration

- ◆ Reformation



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California

- ◆ Not permitted by statute with few exceptions
- ◆ Trade secrets and confidential information
- ◆ The doctrine of inevitable disclosure



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No restrictive covenants?

- ◆ Severance agreements
- ◆ The doctrine of inevitable disclosure
- ◆ Unfair competition



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Thank You!

ANY QUESTIONS?

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