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Benefits and risks of non-compete agreements

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Has an employer ever asked you to sign a "non-compete agreement" or a "covenant not to compete?" Employers sometimes ask employees to sign such documents to prevent the employee from working for competitors upon termination of employment. Are they legal? In Idaho, it depends.

Generally, non-compete agreements have been disfavored by Idaho courts. Through mid-2008, it was often the trend for Idaho courts to limit such agreements and interpret them against the employer. In litigation, this meant the employer had an uphill battle of trying to prove the agreement was reasonable and enforceable.

In July 2008, however, the Idaho Legislature passed more employer-friendly laws regarding "Agreements and Covenants Protecting Legitimate Business Interest." Under this legislation, a "key employee" may be bound by a non-compete agreement with the employer if the agreement has reasonable terms and is not overly burdensome in protecting the employer's legitimate business interest. Essentially, a "key employee" is someone the company has invested in, who gains a high level of knowledge or influence, and who has the ability to harm the employer's legitimate business interest in they go work for a competitor. This legislation covers "key independent contractors" as well. "Legitimate business interest" means many things, such as customer relationships and lists, business plans and methods, technologies, and trade secrets.

This legislation is more employer-friendly because it provides that a non-compete agreement is presumed to be reasonable if the former employee is restricted from working for a competitor for 18 months or less, is limited to the geographic areas in which the employee provided services or had significant influence, and is limited to the type of employment or line of business conducted while working for the employer. If an employee is among the employer's highest paid 5 percent, the law also presumes that the employee is "key."

This legislation turned the tables in a lawsuit because a key employee, who is subject to non-compete terms that are presumed reasonable, now has a difficult burden of demonstrating to a court that the agreement should not be enforced.

Notably, this relatively recent legislation does not address employees who are not "key." Therefore, an employer's non-compete agreement with a rank and file employee would likely still be disfavored, but could be overcome under certain circumstances.

Although the more business-friendly non-compete legislation was passed in 2008, it is considered relatively new in the litigation world. The application of this new law is still being tested in the courts. For example, in Kootenai County, the District Court is reviewing a lawsuit involving the enforceability of non-compete agreements of a financial consultant who left Idaho Trust Bank to work for Wells Fargo Wealth Management. One important unresolved issue in this lawsuit is whether the financial consultant was a "key" employee of Idaho Trust, which could mean Idaho Trust has the advantage of the new employer-friendly non-compete laws.

As a practical matter, employees should take time to understand their non-compete agreements and make sure they are properly compensated for any significant restrictions.

Employers should take advantage of the current employer-friendly laws by drafting non-compete agreements to cover legitimate business interests with terms that are reasonable under the statutes. Employers and the employees should both take care to ensure the non-compete agreement is specific as to all essential terms. Otherwise, if a dispute arises, the court may "re-write" the agreement in a way nobody intended. An attorney can help with the practical and legal aspects of non-compete agreements.

Dylan Eaton is an employment law and general litigation attorney at Parsons Behle & Latimer law firm in Boise.

ABOUT DYLAN EATON