



UNIVERSITY OF THE PEOPLE

***PHIL 1404-01 ETHICS AND SOCIAL RESPONSIBILITY -
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Introduction

Non-compete agreements restrict employees from working for competitor companies for a set period when they leave an employer. “A contract clause ensuring that employees will not compete with the company during or after employment there” (Byars & Stanberry, 2019). This case study examines their use by Jimmy John's franchises. There are arguments on both sides regarding both business protection needs and employee rights.

What purpose do non-compete agreements serve?

Non-competes aim to prevent staff from taking proprietary knowledge and competitive insights to rival businesses. They attempt to safeguard employers' business interests where key staff have access to commercially valuable information.

The conflict of interests between employee and employer

Employers desire to limit future competition from ex-employees using commercially sensitive data they possess, while employees want flexibility to pursue opportunities, including with rivals. There is an inherent contention between these standpoints. It may be reconciled through compromise on restricted durations in non-competes and limiting their application by job level rather than imposing blanket coverage.

Should senior executives face restrictions before joining competitors?

From a company's perspective, for executives like those listed, who hold extensive strategic and financial decision-making authority, some non-compete period upon leaving is arguably reasonable to protect commercial interests. However, very broad geographic restrictions nationwide fail a proportionality assessment. Nuance is needed rather than one-size-fits-all approaches.

But from my point of view, Employees shouldn't be compelled to wait for a predetermined period before joining a competitor, as it's unjust to restrict them from pursuing better opportunities. This applies universally, including low-wage workers seeking higher-paying jobs (Byars & Stanberry, 2019). While losing knowledgeable staff with insights into trade secrets is regrettable, it's essential to foster a positive work environment. Allowing high-level employees to explore better opportunities, even if it means sharing competitive strategies, aligns with the principles of true faithful duty.

What is fair regarding high-level staff possessing commercially sensitive information?

The ethically responsible course of action involves refraining from storing sensitive data or disclosing intellectual property. Given the sensitivity of such information, employees should avoid any intention to harm their former employer.

Allowing a negotiated interval before rival firms can be joined, especially in closely related roles, combined with enforceable confidentiality agreements regarding intellectual property, helps balance company protection needs and employee mobility rights. Fairness is complex, depending on factors like role sensitivity.

Differing perspectives for and against non-competes

Against:

As a business, commercial interests warrant safeguards from staff privy to valuable inside knowledge.

As an employee, overly broad restrictions severely curtail career development options.

For:

As a business, departing staff can significantly undermine competitive position if unrestrained.

As an employee, limited non-competes help safeguard jobs by protecting company value and assets.

Name a major ethical theory or theories and present the summary of said theory.

One major ethical theory discussed is ***consequentialism***, of which utilitarianism is a notable example. This view holds that the morality of any decision or action should be evaluated based on its outcomes - specifically, consequentialists argue that the most ethical choice is the one that yields the greatest overall benefit or well-being. In assessing consequences, there is a focus on ends rather than procedural means. For instance, utilitarians contend that government policies or business practices are justified if they maximize utility and do the greatest good for society as a whole, even if some people's rights or dignity may occasionally be sacrificed.

An opposing view is ***deontological*** ethics, most prominently espoused by Immanuel Kant. This perspective maintains that morality stems not from results, but from our inherent duties and the nature of actions themselves. Certain rules, duties and rights exist objectively, requiring no external justification. Whether an act is deemed ethical rests entirely on if it aligns with these moral absolutes, irrespective of favorable or unfavorable consequences. From this stance, one cannot commit even minor violations for some supposed greater collective payoff - the means themselves predetermine ethicality. Deontology thus offers a non-consequentialist counterpoint focused on motives and means rather than ends.

Conclusion

Non-compete agreements require balancing employer interests in reasonable protections for sensitive information against staff interests in mobility. While some confidentiality measures are legitimate, very expansive restrictions are likely to be overreached. Nuanced approaches to each role can help safeguard businesses while upholding employee freedoms.

References:

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