

Title:

Use Noncompete Agreements To Help Protect Your Business From

Word Count:

904

Summary:

Q: One of my former employees has started a competing business and is calling my clients and trying to steal their business from me. Do I have any legal recourse against him?

-- Brad J.

A: I hate to break this to you, Brad, but unless this former employee signed a noncompete agreement while on your payroll, there is probably very little you can do to stop him from wooing your customers. You should discuss the situation with your attorney, but unless this person is also br...

Keywords:

Small Business , Business Agreements

Article Body:

Q: One of my former employees has started a competing business and is calling my clients and trying to steal their business from me. Do I have any legal recourse against him?

-- Brad J.

A: I hate to break this to you, Brad, but unless this former employee signed a noncompete agreement while on your payroll, there is probably very little you can do to stop him from wooing your customers. You should discuss the situation with your attorney, but unless this person is also breaking the law in some other way (using stolen trade secrets, for example) your attorney will probably concur with me.

Renegade former employees riding the free enterprise wave is one reason noncompete agreements are gaining in popularity among employers who hope to use them to help protect their business from competitive threats launched by former employees. Many employers are now demanding that key employees sign noncompetes as a stipulation of employment. While signing noncompetes usually doesn't sit well with employees who view them as potential roadblocks to their upwardly mobile career path, many businesses will not hire a key employee without his or her signature on the dotted line.

A noncompete agreement is a formal contract between you and your employees in which they promise not to use information or contacts pertinent to your business in a competing situation. In other words, they agree not to take everything they learn working for you and put it to use for someone else. This could mean going to work for a competitor or starting a competing business of their own.

While not popular with employees, noncompete agreements are a good way for employers to keep key employees on the payroll and protect the company's proprietary information. That said, do not go overboard with noncompetes: not every employee should be required to sign one. If an employee does not have access to sensitive information, customer or accounting data, or is integral to the overall success of your business, there is no need to have them sign a noncompete. The janitor, for example, poses very little threat to your business if he gets a job with a competitor. Your sales manager, on the other hand, can devastate your business by hooking his wagon to a competing horse.

Which employees should sign noncompete agreements? While the prerequisites vary from business to business, the following is a good general list. The term "employees" represents executive level, management, supervisory, and non-management personnel relative to that example:

- Employees involved in research or product development.
- Employees involved in the design, fabrication, engineering, and manufacturing process.
- Employees who service products made and sold by your company.
- Sales and service employees who have regular contact with customers or sensitive customer information.
- Employees with access to sensitive business information or trade secrets.
- Most importantly, employees who have sufficient information about your business that would allow them to start a competing business.

Most business experts agree that noncompete agreements are generally a good way to protect your business. The downside is that noncompete agreements are often difficult to enforce and in some states, may not be enforceable at all. Many state courts have ruled that noncompete agreements are too restrictive on an employee's right to earn a living.

In California, for instance, noncompetes are generally only enforceable in connection with the sale of a business and not for employees. In Alabama, noncompetes are generally enforceable in only two contexts: the sale of a business and in connection with employment - but even then the enforcement requires that there be a valid interest worthy of protection.

Some states require that the noncompete be signed at the beginning of the

employment relationship and will only consider the enforcement of a noncompete signed after the initial employment date if the signing of the noncompete was accompanied by a promotion, raise in pay, or other event that elevated the employee to a more important role within the company.

To be enforceable, noncompete agreements must be reasonable on three accounts: Time, geography and scope. Regarding time, you can't restrict someone from competing with you forever, so one to three years is the accepted time period for most noncompetes.

As to geography, you can enforce restriction in the general area where you conduct business, but you can not enforce the restriction beyond those boundaries. And for scope, the agreement can restrict certain actions on the part of the employee, but can't be so generally restrictive that the employee won't be able to earn a living working in the same industry in a noncompetitive position.

One interesting thing to note: noncompete agreements are not enforceable against certain "professionals," like doctors, CPAs, and lawyers (who do you think writes all those noncompetes).

At this point, Brad, the best thing you can do is contact your attorney to see if you have other grounds for suit, then contact your customers and let them know what's going on.

Explain the situation regarding the former employee, but do so calmly and resist the urge to tell them what you really think of this guy. Showing your anger to the customer is not going to help you keep their business .

Reaffirm your relationship with the client, tell him how much you value his business, remind him of your track record and level of service, then ask one simple question: What can I do to make sure your business stays with me?

Here's to your success!