


The Keys to Drafting an Effective and Enforceable Non-Compete

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Costs/Benefits of Non-Competes

- Deter employees from joining competitors
- Deter competitors from hiring your employees
- Prophylactic for protecting employer's trade secrets and confidential information
- Legal foundation for tortious interference claims
- Assist in maintaining value of business in the event of a sale

Costs/Benefits of Non-Competes

- Negative effect on recruiting and employee morale
- Administrative burden on HR and managers responsible for securing them
- May deter employer's willingness to hire competitor's employees
- Cost associated with creating the contracts
- Consistency may require enforcement in all departure cases
- Significant cost associated with enforcement efforts

Basic Legal Framework

- Section 15.50 of the Tex. Bus. & Com. Code
- A covenant not to compete is enforceable if:
 - it is ancillary to or part of an otherwise enforceable agreement at the time the agreement is made
 - it contains limitations as to time, geographical area, and scope of activity to be restrained that are reasonable and does not impose a greater restraint than is necessary to protect the employer's goodwill or other business interest

Protectable Interests

- What are you trying to protect?
- Most commonly recognized PIs:
 - Trade secrets and confidential information
 - Goodwill
 - Specialized training
 - Sale of a business
- Identify and call-out protectable interests in the contract

Cite to Protectable Interests

1. CONSIDERATION FOR AGREEMENT.

You understand that XYZ is engaged in a continuous program of research, development, production and marketing in connection with its business and that it is critical for XYZ to preserve and protect its "Proprietary Information" (as defined in Section 2 below), its rights in "Inventions" (as defined in Section 4 below) and in all related intellectual property rights. You acknowledge that, as a result of your employment with XYZ, you have and will continue to receive confidential information and trade secrets related to XYZ and its business and may receive specialized training from XYZ, each of which constitutes good and valuable consideration in support of your obligations made under this Agreement. As additional consideration, you may also have the opportunity to develop valuable business relationships with employees, agents, suppliers, and customers of XYZ and to use XYZ's resources and goodwill in the marketplace to develop those relationships. Finally, by your signature below, you acknowledge that your employment with XYZ, which XYZ would not allow but for your execution of this Agreement, constitutes consideration in support of your return promise to maintain the confidentiality of all specialized knowledge and confidential information as well as your promise to adhere to the other restrictions listed in this Agreement.

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"Protecting Business Interests with Non-Compete Agreements"