

In Texas, are Non-Compete Agreements Enforceable?

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There is a nasty rumor going around. The rumor is that in Texas, non-compete agreements are not enforceable. Believing this rumor could get employees and those companies that hire employees with non-compete agreements in hot water. The truth is, there are a lot of factors that go into whether a non-compete agreement is enforceable in Texas. Here, I discuss a few of the issues an employer should consider when determining whether a non-compete agreement is enforceable.

Texas Business and Commerce Code, section 15.50, and those cases interpreting that statute, govern whether a Texas non-compete is enforceable. Generally speaking, to be enforceable, a non-compete agreement must contain, *at a minimum*, the following:

- It must be an agreement ancillary to or part of an enforceable agreement;
- When the agreement is made, any limitations to the duration, geographical area, and scope of the restraint must be reasonable; and
- To be reasonable, the limits on duration, geographical area, and scope must not be greater than is necessary to protect the employer's goodwill or other business interest.

Of course, simply having all these things in a document executed by your employee is not enough. The employer has to provide the employee with confidential information, trade secrets, or goodwill, and make efforts to preserve the nature of these disclosures. Remember, the purpose of enforcing a non-compete is to allow the employer to provide this information to its employees without the fear of it being given to a competitor.

Case law concerning the enforcement or non-enforcement of non-compete agreements is all over the map. This is because each situation is somewhat unique. Reasonableness, for example, is often litigated. What may be a reasonable time limitation for one industry is unreasonable for another. The same is true for geography and scope. An employer should look to the lifespan of the usefulness of the confidential information (*i.e.*, how long does this confidential information give them a competitive edge), the specific market they are servicing, and whether there are any restrictions limited to those roles that the employee had while employed.

The bottom line is: whether a non-compete agreement is enforceable is relative to the quality of the documents and facts presented to a judge at the time an employer is trying to enforce the agreement. Unless the judge making this determination tells you otherwise, a safer assumption is that the agreement very well may be enforceable.

Related Attorneys

Richard L. Hathaway