



Non-Competes Legislation Summary

Timing of Agreement

If the noncompetition agreement is entered *in connection* with the commencement of employment, it must be in writing, signed by both parties, and expressly state the employee has the right to consult with counsel before signing. The agreement must also be provided to the employee either earlier than the formal offer of employment or 10 business days before the employee starts work.

If the agreement is entered into *after* the employee has begun working, it cannot be in conjunction with either the employee leaving the company or getting fired. The agreement also cannot be tied to whether or not they stay employed with the company. Again, the agreement must be in writing, signed by both parties, expressly state the employee has the right to consult with counsel before signing, and notice of the agreement must be provided at least 10 business days in advance before it becomes effective.

Noncompetition Agreement Requirements

The employer must fashion the agreement to cover activities the employee performed in the past 2 years that are no broader than needed to protect one of the following legitimate business interests:

- The employer's trade secrets
- The employer's confidential information that would otherwise not qualify as a trade secret
- The employer's goodwill

The noncompetition agreement must not exceed 12 months from the last day the employee works. In the event the employee has breached his or her fiduciary duty to the employer or otherwise stolen property belonging to the employer, this duration may be extended up to 2 years.

The agreement must also be limited to geographic areas in which the employee provided services, had a material presence in, or where their influence was presumptively reasonable within the last 2 years of their employment.

Garden Leave Clause

The agreement must also be supported by a "garden leave clause" or other agreed upon consideration between the employer and the employee. This means the agreement must provide for the payment of wages on a prorated basis during the entirety of the restricted period of at least 50 percent of the employee's highest annual salary during the previous two years of their employment.

However, if the duration of the agreement exceeds beyond 12 months as a result of the employee's breach of duty or theft, the employer will not be required to provide payments during said extension of the restricted period.

Exceptions

A noncompetition agreement will not be enforceable against the following:

- An employee who is classified as nonexempt under the Fair Labor Standards Act
- Undergraduate and Graduate students in an internship or other form of short-term employment
- Employees terminated without cause or laid off
- Employees age 18 or younger