Now's The Time to Dust Off Non-Compete Agreements

Publication
5.03.10

In the past year, as many companies have struggled just to keep the doors open, the prospect of fighting a costly unfair competition battle with an employee who may have been "cherry-picked" by a competitor has been low on the priority list. However, as businesses regain their confidence and begin to bring new employees on board, non-competition litigation will likely move back into the spotlight.

Fortunately, contractual agreements that restrict employees' post-employment competitive activities, commonly referred to as "restrictive covenants," are an invaluable tool for companies to use to protect their business interests. Some of the more common restrictive covenants are listed below.

- Non-Competition
- Non-solicitation
- Non-recruitment
- Non-disclosure
- Return of property

It is important to remember that there is no uniform federal law governing restrictive covenants. Rather, because these are contractual issues, the validity of such agreements is determined by state law. Nearly every state has unique and distinct requirements for restrictive covenants. Thus, a contract that is lawful in Texas may be completely unlawful in a neighboring state. For companies that operate in multiple states, the differences in state laws can make drafting and enforcing restrictive covenants quite a challenge.

The bottom line: Review your existing restrictive covenants to ensure they comply with governing law today before your key employee walks out your front door to join your main rival. If you don't currently use restrictive covenants, then it's definitely time to reconsider. In this situation, the age-old adage "an ounce of prevention is worth a pound of cure" is certainly squarely on point.

This article appeared in the May 3, 2010 edition of the *Collin County Business Press*. It also appeared on Dallas HR Management Association eNetwork in June 2010.