



What Every North Carolina Employer Needs to Know About Restrictive Workplace Covenants (Part 3)

Insights

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This is the third Insight in a three-part series that discusses restrictive covenant agreements in North Carolina. If you missed the first part, which discusses the purpose and scope of restrictive covenants, [click here to read the Insight](#). If you missed the second part, which discusses entering restrictive covenant agreements, [click here](#). **This Insight will address considerations for enforcing restrictive covenant agreements on departing employees in North Carolina.** While there are a lot of considerations that arise with a departing employee – reclaiming company property, removing employee access to company servers, ensuring confidentiality of company information – it is the enforcement of restrictive covenant agreements that could be the most critical aspect of the off-boarding process.

Let's say you have an employment agreement that restricts a departing employee from competing against your business, soliciting your business' customers or employees, and from using the confidential information learned throughout employment for their own benefit or in aid of a competitor. That's a good start, but it's only a start. What should you do to ensure those agreements are followed by your workers and ultimately enforced by a North Carolina court if necessary?

First Things First

As an initial matter, after employees provide notice of departure or depart without notice, you should remind them about their obligations under an employment agreement, including any restrictive covenant agreements, in writing. You can provide them with a copy of the agreement, as many employees forget about the restrictions over time or lose copies of the agreements. Hopefully, this reminder will be enough to stave off any potential violations. Unfortunately, that is not always the case and you may need to go further to protect your interests.

Next Steps

Oftentimes, you'll learn a departed employee is working for a competitor after they have departed your organization. Upon learning about issues with a departed employee, you may want to start by sending a letter reminding the employee about their obligations. That letter may also go to the new employer.

A harsher way of learning about a departed employee's post-employment activities is when customers that the employee worked with suddenly move their business with the departed employee. In this instance, you can send a targeted letter to remind the employee about their obligations. The letter may open a dialogue that can result in clarifying any issues or obtaining a resolution of any potential wrongdoing.

Going Further

In the event that a former employee persists with their misconduct and continues to violate the terms of their restrictive covenant, you have the option of proceeding to court. Typically, the terms of your written agreement contain the process for enforcing the agreement in court. Those terms should provide you with a blueprint to follow.

You may be able to petition the court for a restraining order and injunction to prohibit a former employee from improperly competing against your business, soliciting customers or employees, or using confidential or trade secret information. But that may just be the tip of the iceberg. If the former employer has stolen customers, you may be entitled to damages. Further, the agreement with the former employee may contain certain damages that you may recover in any legal proceeding you file.

Parting Considerations

Attorneys experienced with restrictive covenants are integral to protecting your business and enforcing the restrictive covenant agreements. Attorneys at Fisher Phillips can assist you in enforcing and litigating restrictive covenant agreements in North Carolina and throughout the United States. If you are interested in adopting restrictive covenants, need your current employment agreements reviewed, or find yourself in the situation of needing to enforce the agreements, please contact your Fisher Phillips attorney, the authors of this Insight, or any member of our [Employee Defection and Trade Secrets Practice Group](#). Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information.

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