



# The Advantages of Using Forum Selection Clauses

Insights

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As a management-side labor and employment law firm with a national practice, we often deal with companies who have operations in multiple states throughout the country. These same companies are often frustrated in their desire for consistent management and human resources practices because of the differing laws in the states in which they do business. Nowhere have these companies felt this frustration more than in regard to the multi-varied state laws regarding the enforcement of non-competes. Companies that want a single standard for non-competes for all of their employees often find themselves unable to implement such consistent standards without running afoul of an individual state's limitations on the enforcement of such non-competes.

Companies with multi-state locations have a legitimate business interest in the consistent application and enforcement of their non-competes, in terms of both their need to protect customer relationships across the country and their desire to maintain morale amongst their employees by not subjecting them to different standards. These legitimate business interests are ones that have been viewed by courts favorably in providing a legal avenue to such companies to obtain consistent covenant enforcement throughout the country.

Many states will not respect a choice of law provision seeking the application of another state's law, especially if such application would create a result contrary to the state's fundamental public policy. However, these same states will enforce a choice of forum provision in a non-compete agreement that requires that all disputes regarding the non-compete agreement will be resolved in a particular jurisdiction. By having such a forum selection provision in a non-compete agreement, these companies can ensure that all such disputes will be litigated in the same forum, thereby ensuring a greater consistency in the application of law and outcome. By knowing which states these disputes will be litigated in, these companies will also be able to determine whether the home forum state is likely to apply its own state's law in resolving such disputes or will instead apply the law of another jurisdiction.

In looking at the circumstances in which a multistate employer can legitimately enforce a forum selection provision, it appears that the optimal circumstance is when the forum state selected is the state in which a company's central headquarters are located. There is ample support in the law that suggests that where a company has its senior management team (particularly human resources) located in the company's headquarters state, the courts in that state will enforce forum selection clauses mandating that all litigation regarding the agreement take place in the state. By also inserting a choice of law provision in the non-compete agreement requiring that the law of the

inserting a choice of law provision in the non-compete agreement requiring that the law of the forum state be applied in resolving any disputes arising out of the non-compete agreement, there is a stronger likelihood that the forum state will apply its own law. While there is no guarantee that a forum state court will apply its own substantive law, the fact that the parties agree to the application of the forum state's law is a positive factor favoring use of the forum state's law.

From a practical standpoint, the use of a forum selection provision combined with a choice of law provision selecting the forum state's law can be a powerful tool for companies that want to use a single non-compete agreement for all their employees across the country (at least the employees of a certain level that justifies the use of non-compete restrictions).

By way of example, assume that a company has its headquarters in Florida, where the local legal regime favors the enforcement of restrictive covenants, and has locations in twenty-states including California. Further assume that the company has a few salesman in California that the company wants to have bound to the same non-compete as all of the company's other salesman. By having a forum selection provision in Florida and a Florida choice of law provision, there is a significant opportunity for that company to enforce its non-compete against the California salesperson, notwithstanding California's statutory prohibitions against non-competes. Since the company would have a significant and legitimate business interest in maintaining consistent human resources policies and practices, particularly in regard to the enforcement of non-competes, a Florida court may well protect its home state employer's, business interest and enforce its non-competes.

While the enforceability of such a strategy is dependent on individual facts and circumstance for each company, such a strategy is one that should be seriously considered for any multi-state employer seeking to have consistent enforcement of its non-competes throughout the country.

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