

Protect Your Business with Employment Contracts:
Non-Competition and Non-Solicitation Agreements

Your workforce is the engine of your business. With the proper workplace policies and procedures your workforce should operate in an efficient and productive manner. However, you should not be shortsighted and only focus on the policies and procedures that govern the behavior of your employees while they are *still* employed by your business. All too often former employees use their former employer's internal information and methods to aid their business rivals or start their own business. With the help of an attorney, you can prevent, or limit, your former employees from distributing your confidential or proprietary business information.

In Michigan, employers have the option to include non-competition and/or non-solicitation agreements within an employee's employment contract. The purpose for a non-competition and/or non-solicitation agreement is to protect an employer's reasonable competitive business interests. However, not all non-competition and/or non-solicitation agreements will be enforceable. Generally, these types of agreements must be reasonable in terms of the information that is to be protected and the geographic and durational scope of the restriction; which means the restriction must be reasonable in regards to the places and time frame stated in the agreement.

Below is a more detailed explanation of the two respective clauses:

Non-Competition Agreement:

A non-competition agreement is exactly what it sounds like. It is an agreement used to prevent, or limit, a former employee's ability to seek employment with a business rival or to start their own business that directly, or indirectly, competes with your business in the same industry, and perhaps even competes for the same clients. Generally, these types of agreements are enforceable, however, a court will evaluate the *reasonableness* of the information sought to be protected and the geographic and durational scope of the agreement before it will be enforced. There is no exact science on what is "reasonable" in these kinds of cases because each situation is different, and what may be reasonable in one instance may not be reasonable in another. However, it is important, for the sake of protecting your interests, to ensure you have a non-compete clause in all of your employment agreements.

Non-Solicitation Agreement:

A non-solicitation agreement can be used to prevent, or limit, former employees from contacting your clients and current employees in an effort to lure them away from your business. Again, these non-solicitation agreements must be reasonable before they will be enforceable.

You have put a lot of time, effort, and money into starting and building your business. Now is the time to consider how you will protect your business from being harmed by former employees that choose to use your proprietary information to help your rivals or even themselves by starting their own business. To ensure that your non-competition and non-solicitation agreements are legally enforceable you should seek the advice of an experienced employment law attorney, because often times we come across clients who have included such clauses in their agreements but they are unreasonable and unlikely to be enforced.

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