Getting Full Value out of Noncompete Agreements

Articles April 1, 2016

Increasingly, companies are having employees sign noncompete and nonsolicitation agreements in order to protect the company, and its customer base, should the employee leave the company. These agreements are clearly appropriate for certain employees, enforceable in court, and for many employers should be a high priority. Not having one can put the business at substantial risk.

However, all such agreements are not equal and should not be the same. They must be carefully tailored to suit the company's needs. For example, some businesses need a noncompete agreement with their employees, while others are better suited with a nonsolicitation agreement. Others may need both. A poorly drafted noncompete may not be enforceable, leaving the company without the protections that it thought it had and in danger of having its customers poached by a former employee.

Here are some additional requirements for these types of agreements:

- The agreements must be supported by "adequate consideration" to be enforceable.
- The agreements must be reasonable in time and scope. There is no set time or scope that is reasonable under the law. Rather, what is reasonable will vary company to company and employee to employee. Every situation is unique, so your agreements need to be drafted with that in mind, and may well be different for each employee.
- They should explain why the post-employment restrictions are necessary and reasonable.
- They should provide for certain listed remedies for the employer should the employee violate them.
- Often overlooked, they should also be assignable. Making them assignable maximizes the value of the company should the owner consider a sale or merger.

If you have any questions about noncompetes, want to review your existing agreements, or simply want to discuss whether you should have employees sign an agreement, please contact Scott Leah at sleah@tuckerlaw.com