

## **Protecting Property or Restricting Trade? A Closer Look at Noncompete Agreements and Guidelines for Employers**

Robert J. Paul\*

and

Brian P. Niehoff\*\*

### **Abstract**

To prevent former employees from utilizing a business' trade secrets or other proprietary information, employers are turning to the use of noncompete agreements. Such agreements may be viewed by the courts as a means for protecting the property of the employer or as a restriction on the former employee's ability to earn a living. This article provides an overview of the literature and cases concerning noncompete agreements. In addition, guidelines are provided to assist employers in the writing of legal noncompete agreements and enforcing such agreements. Practical alternatives are also discussed that can potentially minimize the need for such agreements.

---

The old saw "out of sight, out of mind" may apply to some personal relationships, but its application to business is questionable particularly as it pertains to employee turnover. Employees can still have considerable impact on the business once they depart (Maatman, 1997). Disgruntled employees can sabotage business operations or tie up valuable organizational resources in court actions, or discredit the firm to customers, clients, or remaining employees. On a less aggressive but equally damaging scale, former employees can join a competitor or open their own businesses, applying the knowledge gained from previous employment to pull customers, clients and employees away from the company. To reduce the risk of these latter strategies, employers are increasingly turning to "noncompete agreements."

---

\* Department of Management, College of Business Administration, Calvin Hall 101 Kansas State University, Manhattan, Kansas Phone: (785) 532-6296 Email address: [bpaul@ksu.edu](mailto:bpaul@ksu.edu)

\*\* Department of Management, College of Business Administration, Calvin Hall 101, Kansas State University, Manhattan, Kansas, Phone: (785) 532-6296 Email address: [niehoff@ksu.edu](mailto:niehoff@ksu.edu)

The recent explosion of post-employment agreements is due in part to the current employment environment. Competitive environments are more intense, leading to changes in organizational structures and size. The resulting downsizing and layoffs have eroded employment security and employee loyalty. Rapid technological changes across many industries have placed a premium on technical skills and raised the demand for people with such skills. The shift from a manufacturing to a service focus in the U.S. economy has created the need for more "knowledge workers" (McDonald, 1990) resulting in a workforce that is as competent as it is mobile. Added to the mix is a workforce impatient with slow promotional and career progressions. All of these factors combine to place employers on the defensive, needing to protect their trade secrets and customer base from departing employees and competitors, hence the need for noncompete agreements.

What constitutes a noncompete agreement? Are such agreements legal? If so, what are their limitations? How should an employer approach noncompete agreements? The purpose of this article is to provide answers to these questions. The first section summarizes the different types of noncompete agreements and discusses the legal issues surrounding noncompete agreements. The second section provides specific guidelines to employers for writing and maintaining such agreements, as well as actions geared toward minimizing the loss of valuable employees.

### Restrictive Employment Agreements

#### **Background**

The term "restrictive covenant" appears in different contexts (Murray, 1998). In this article, it refers to covenants, frequently included in contracts of employment, that seek to restrain the employee from working for a competitor or setting up a competing business within a specified time and location after leaving the employer's business (Flynn, 1998). Such covenants are more correctly known as "restraint clauses", because under common law they constitute a restraint of trade (Sterk, 1993; Cenker & Lensman, 1997). As such they are valid only if they are reasonable as to location and time and do not overreach the legitimate interests of the employer (Martucci & Place, 1998).

In general, courts have been reluctant to enforce restraint clauses for a variety of reasons, as they may restrict the efficient use of human capital as well as reflect a resemblance to "involuntary servitude" (Sterk, 1993). Obviously, the legal restraints on alienation of human capital contrast sharply with the free alienation policies that

underlie traditional property law since the owner of property is generally free to rent or dispose of such property. In the case of human capital, the employer's power to restrain departing employees is limited.

The real consequences of restraint clauses have come into question. While courts generally find them detrimental to employees, Sterk (1993) has argued:

“that the persons most likely to benefit from rules that keep earning capacity in the hands of its original holder are those persons best endowed with the talents, skills and knowledge that contribute to that earning capacity” (Sterk, 1993, p. 385).

To protect trade secrets, employers may not be willing to incur the expense of training employees who may, at some future date, leave to join a competitor or become competitors themselves. Without training, additional burden is placed on the less productive workers, as they lack the capacity to seek other opportunities for employment. As talented workers leave to seek other opportunities and less talented workers are retained, the overall quality of employer's workforce is reduced. Thus, restraint clauses may actually hinder the employer more than those employees for whom such hindrances were initially intended.

### **Types of restraint clauses**

“Restraint clause” is a generic term that includes several types of agreement which can be used individually or in combination to provide employer “asset” protection in different situations (Marino & Meyers, 1994). The basic types of restrictive clauses include noncompete clauses, nonsolicitation clauses, nondisclosure agreements, employee privacy clauses and intellectual property or business idea clauses (Marino & Meyers, 1994; Flynn, 1998; Freund, 1998; Carr, 1998).

Noncompete clauses. Technically all restrictive clauses are non-compete clauses. However, true noncompete clauses are more specific. A noncompete clause attempts to prevent an employee from leaving his or her employer and either starting or joining another business in direct competition with the former employer. Noncompete clauses generally spell out limitations on their range and time duration.

Nonsolicitation clauses. These clauses are designed to prevent, or at least limit, access to former customers by a departing employee. Even without a nonsolicitation clause common law will give some protection to client relationships. However, not all courts consider customer lists as protectable business interests without a specific nonsolicitation clause. The general guideline is that customer contacts are protectable only when they are developed

through employer effort and investment and are valuable in the continuing operation of the employer's business (Therma-Guard, Inc. v. Cochran, 1991).

Employee piracy clauses. These clauses are closely related to nonsolicitation clauses except that they involve pirating other employees, rather than customers, away from a former employer (Barden Cream & Milk Co. v. Mooney, 1940). Anti-piracy clauses make sense because one's employees are a business asset worth protecting (Dozier & Gay Paint Co. Inc. v. Dilley, 1988). Even states that prohibit most other types of restrictive clauses (e.g., California) justify non-piracy (or noninterference) clauses (Loral Corp. v. Moyes, 1985). Thus, if a new employer encouraged an employee to breach his or her contractual piracy clause with a former employer, the former employer could sue both the individual employee and the new employer.

Nondisclosure (confidentiality) clauses. These clauses differ from other restrictive clauses and are valid only to protect an employer's trade secrets or other confidential information. Unless a trade secret can be proven to be a valuable secret, there is no basis for action concerning disclosure or misappropriation. A trade secret is "any formula, pattern, device or compilation of information that is used in one's business and provides the user with an opportunity to gain a competitive advantage over competitors who do not know or use it" (Restatement of Torts, 1939).

When determining whether information possessed by employees constitutes a trade secret that would cause a hiring injunction, courts consider the following six factors (Flynn, 1998):

1. The extent to which the information is known outside the business
2. The extent to which the information is known by employees and others who are involved in the business
3. The extent of measures that were taken by the business to guard the secrecy of the information
4. The value of the information to the business and its competitors
5. The amount of effort or money expended by the business in developing the information
6. The ease or difficulty with which the information could be properly acquired or duplicated by others

In summary, courts ask: Has the former employer done an effective job of protecting information? Could the information be obtained from sources other than the competitor's former employees?

Intellectual property (business idea) clauses. These clauses normally have a dual purpose: (1) to prevent former employees from taking information or technology developed by the former employee and using it in competition with the employer, and (2) to prevent current employees from using company resources to develop inventions for their own personal profit (Flynn, 1998).

### **Basic Requirements for the Validity of Noncompete Agreements**

Although courts differ in their interpretations, most adhere to the same set of basic guidelines for creating valid noncompete agreements. These guidelines (Martucci & Place, 1998) include:

1. They must protect an appropriate and recognizable employer interest.
2. They must be ancillary to a legitimate business relationship.
3. They must provide mutual benefit for both employer and employee.
4. They must be reasonable in scope and duration.
5. They must not be contrary to the public interest.

Appropriate and recognizable employer interest. Employers have a right to protect their interests but not to prevent competition. Thus, an employer can require employees to enter into a non-compete agreement to protect trade secrets, confidential business information, goodwill, customer contacts, ongoing customer relationships, current employees (piracy) and special training provided by the employer to the employee. However, the employer cannot completely prevent employees from working for a competitor, starting their own business or using specialized skills or training to earn a living (West Group Broadcasting, Ltd. v. Bell, 1997).

Ancillary to a legitimate valid business relationship. To be valid a non-compete agreement must serve as an aid, adjunct or accessory to a legitimate business interest. In an employment situation the agreement normally applies to, and promotes, an ongoing employment relationship. An agreement signed after the employee departed would not be valid (Martucci & Place, 1998).

Provide mutual benefit for both employee and employer. As with any contract, noncompete agreements must include an exchange of something of value, or valid consideration. Nearly all state courts consider new employment as valid consideration when the agreement is a condition of employment. For example, a condition of employment may be the signing of a noncompete agreement where both parties receive something of value. If current employees are involved, the court must determine whether continued employment is valid consideration.

Most courts regard continued employment as valid consideration in support of a noncompete agreement. In jurisdictions where continued employment is not regarded as adequate consideration, the employer will have to provide additional consideration (a bonus, raise or other compensation) when current employees enter into new noncompete agreements.

Reasonable in scope and duration. Normally courts require limits on the geographic area, clientele activity and time period involved in noncompete agreements. Such limits should be carefully designed to permit the former employee to earn a living while at the same time preventing the employee from competing in the employer's primary market. When ruling on these restrictions, courts focus on the nature of the employer's business. For most businesses, restrictions of one to two years in a ten to thirty mile radius of a former employer's place of business are considered reasonable (Martucci & Place, 1998).

With regard to clientele, an employer is advised to require a former employee to limit business transactions to current customers and contacts or to customers with whom the former employer had significant personal contact (Frontier Corp. v. Telco Communications Group, Inc., 1997). Concerning the former employee's activities, courts ask: (1) whether the restrictive agreement stifles the employee's inherent skill and experience, (2) whether the benefit to the employer is disproportionate to the employee's detriment, (3) whether the agreement destroys the employee's sole means of support, and (4) whether the employee's skills were developed during employment (Cenker & Lensman, 1997).

Not contrary to public interest. If a covenant not to compete would prevent an employee from fulfilling a need for key services in an underserved area, courts may find it invalid (Weber v. Tillman, 1996). Normally courts recognize that the partial restraint of trade created by covenants not to compete is in the public interest because it encourages investment in new employees.

### **Who Should be Included in Noncompete Agreements?**

When deciding who will be required to sign post employment noncompete agreements managers must determine which employees pose a threat as potential competitors. Courts tend to be unsympathetic to firms that require blanket agreements with all employees. If the covenant not to compete is too broad, the court may not enjoin a former employee from competing with the firm. Thus the key issues are: (1) what will the court do if it

decides that some part of the covenant not to compete is too broad, and (2) what type of potential harm could an employee or group of employees do to the firm (Martucci & Place, 1998)?

The most clear-cut case of the need for a covenant not to compete is the “unique” individual (Condiff, 1995). Proving uniqueness, however, may be difficult. Courts may agree that a given employee is unique if he/she:

1. performs special activities that few other people can do
2. has a large and identifiable customer following
3. can show that firm ratings or market share have increased significantly since he/she was hired
4. is equated with the company by the public
5. accounts for a large share of the firm’s business

In such cases some courts may be inclined to prohibit employee establishment of a competitive business or employment with a competitor for a given time and location.

#### **Legal Issues Pertaining to Noncompete Agreements**

The legal rights and issues involved in non-compete agreements are very complex. Civil relief can include damages or injunctions, and disputes can even lead to criminal proceedings (Maatman, 1997). Depending on what the former employee did and when and where the conduct occurred, a number of legal principles can obtain, and multiple lawsuits can be filed in different jurisdictions. Recent rulings indicate that non-competes, non-disclosures and restrictive covenants are not recognized in several states (Montana, Nevada, North Dakota, and Oklahoma) and are invalid or limited in others (Florida, California, Colorado, Hawaii, Louisiana, Oregon, South Dakota and Wisconsin). In summary, the laws vary by state and type of restrictive clause, may be void in all or certain circumstances, usually contain specified exceptions, and normally consist of a codified form of the “rule of reason.”

In spite of the many exceptions and limitations there are laws, most written to address other problems, that offer a legal basis and guideline for noncompete agreements. The use of restrictive covenants is primarily an issue of state law (Martucci & Place, 1998). However, there are exceptions (e.g., antitrust or forfeiture of benefits) where federal law would be involved.

#### **U.S. Constitution and Amendments**

The Thirteenth Amendment’s protection against slavery and involuntary servitude prevents an employer from demanding specific performance of an employment contract (Wooley v. Embassy Suites, Inc., 1991). Thus,

one reason for the courts refusing to grant specific performance restrictions (i.e., impose a noncompete agreement) is concern about imposing slavery or involuntary servitude. It is possible that the Fifth and Thirteenth Amendments' prohibition of "deprivation of property without due process" may restrict noncompete agreements also. The human capital developed by an individual through education, training and experience may be considered property. A noncompete agreement could deprive an employee of such property if it prohibited use of industry-specific skills. Even the preamble to the Constitution states that certain rights ("life, liberty and the pursuit of happiness") are inalienable. Noncompete agreements, by prohibiting the application of one's skills, might restrict these inalienable rights.

### **Federal Laws**

Several federal laws apply to various types of restrictive clauses. Among these are laws surrounding trade secrets, taxes, retirement, and health insurance.

Uniform Trade Secrets Act. This law seeks to protect an employer's trade secrets by a number of means including broad injunctive relief to remedy misappropriation or threatened misappropriation of trade secret information (Novelty Bias Binding Co. v. Shevrin, 1961). The law includes "inevitable disclosure" which could occur if a key employee were employed by a competitor. However, employers must exercise due caution, treat confidential matters as secrets and meet certain other qualifications established by statute and by the courts. Courts appear unwilling to help employers who have not attempted to protect their trade secrets (Lake, Budden & Lett, 1991).

Tax Laws. From a tax perspective covenants not to compete are intangible assets. They are desirable to an employer because their amortized value can be deducted annually over the life of the covenant. There is no simple formula for determining the value of a covenant not to compete, although the income approach is used most often (Russell, 1990). The approach involves two steps: (1) project the total monetary value expected to accrue to the investor (i.e., how much the employer would be hurt if an employee entered into competition), tempered by the probability that the employee will actually enter into competition at some time during the term of the covenant, and (2) discount these to present worth using a discount rate that considers both the degree of risk involved and the layers of taxes included in the projection.

Employee Retirement Income Security Act (ERISA). This law, designed to address the employee benefit of investing in a pension plan, would be relevant to noncompete agreements if such benefits were considerations. If, for example, an employer offered an employee the opportunity to invest in a pension plan in exchange for an agreement not to compete. The value of this benefit is limited by ERISA regulations.

Consolidated Omnibus Budget Reconciliation Act (COBRA). This law, as with ERISA, would apply to noncompete agreements if the employer paid health insurance premiums as a consideration. An employer is duty bound in most circumstances to provide a departing employee with the opportunity to purchase replacement health insurance coverage for up to 18 months. Since an employer is not required under COBRA to pay the premium, a company can provide consideration by agreeing to pay insurance premiums on behalf of the employee for any period of time between one month and 18 months (Maatman, 1997).

Other federal laws. Other federal laws, written to address other problems, may also restrict the use of noncompete agreements. Courts will require the employer to have “clean hands” before they will grant a request. This means that the employer cannot have done anything wrong in dealing with the employee (Marino & Myers, 1994). The “clean hands” requirement brings into consideration a number of federal anti-discrimination laws (Civil Rights Acts of 1964, 1972, 1978, 1991; Age Discrimination in Employment Act; Americans with Disabilities Act). Basically, noncompete agreements must not result in discrimination against protected groups.

### **State Laws**

Making sense of state laws concerning noncompete covenants is very difficult, and legal assistance is advised. Some states (e.g., Montana, Nevada, North Dakota, and Oklahoma) explicitly refuse to recognize covenants not to compete between employers and employees (Holley, 1998). More frequently, an employer’s interest in preventing departing employees from using their skills and knowledge for a competitor is at odds with states’ interpretations, attitudes and policies against restraining individuals from working in their chosen profession. However, some states permit noncompete agreements of certain types, for certain employees in certain circumstances (Carr, 1998; Condiff, 1995). For example, Georgia does not permit any rewriting of noncompete agreements, but other states allow courts to rewrite the contract or “blue pencil” out unreasonable language. California courts are quite sympathetic to employees since they regard noncompete agreements as preventing the employee from earning a living. Employers are well advised to draft different agreements for different employees

and to develop standard clauses dealing separately with each type of restriction for each major job category. These clauses must meet the basic requisites for validity (Martucci & Place, 1998).

In general, when courts decline to enforce noncompete covenants, they normally present one or more of three justifications (Sterk, 1993). First they contend that enforcement would stifle competition (Duffner v. Alberty, 1986). Second, they cite inequality of bargaining power between employers and employees that favors employers (Arthur Murray Dance Studios v. Witter, 1952). Finally, they conclude that enforcement would constitute impermissible involuntary servitude (Lynch v. Bailey, 1949).

### **Recommendations**

In spite of the tangle of laws and court rulings and the generally unfavorable view courts have of noncompete agreements, it is still possible to suggest some guidelines (Marino & Myers, 1994; Murray, 1994; Warneford, 1995; Weiss & Lincoln, 1998). These guidelines can be placed in three categories: (1) writing enforceable noncompete agreements, (2) enforcing such agreements, and (3) organizational actions or practical alternatives that could limit the need for such agreements.

#### **Writing Enforceable Noncompete Agreements**

As a general rule, employers are advised to become familiar with laws and court dicta. It is also advisable to obtain legal counsel and assistance in the writing of such agreements. In addition, Warneford (1996) noted the following broad guidelines that can be applied:

1. Be sure such agreements are part of or ancillary to a legitimate business interest, protect an appropriate and recognizable employer interest, provide mutual benefit for both employee and employer, are reasonable in scope and duration and are not contrary to the public interest.
2. Define the covenant in narrow specific terms.
3. In general, make the covenant enforceable for no longer than six months to a year after an employee leaves.
4. Restrict an employee from soliciting clients on the employer's roster at the time he or she departs, rather than accounts previously lost or subsequently won.
5. Enjoin former employees from recruiting agency staff who actually worked on restricted accounts, but not other employees.

6. Couple a covenant with a confidentiality agreement.
7. Don't ask everyone to sign restrictive agreements. Require them only for those capable of damaging the company's competitive position or goodwill.
8. Don't set up covenants that may not legally apply in the jurisdictions of other states or countries.
9. Update the agreement annually.

### **Enforcing Noncompete Agreements**

The general rule is that departing employees may take and use elsewhere any general knowledge or skills acquired while working for their former employer but may not disclose the employer's trade secrets (Weiss & Lincoln, 1998) or gain an unfair competitive advantage over their former employer. In general, employers would be advised to follow a distinct process when attempting to enforce a noncompete agreement. This process should include the following steps:

1. Determine the applicability of the noncompete agreement and inform the employees involved that it will be enforced.
2. Conduct and document an exit interview to remind employees of the agreement.
3. Have departing employees return all company property.
4. Send follow-up letters to both former employees and new employees reminding them of the agreement.
5. If there is disagreement attempt to settle out of court.
6. Seek an injunction if necessary. If this decision is made, technical rules require the employer to show that: (1) irreparable harm will occur in the absence of the injunction, (2) there is no adequate remedy at law, (3) more harm will result from withholding an injunction than from filing it, and (4) the employer has a substantial likelihood of success in the case (Marino & Myers, 1994).

At present, an injunction is the primary tool used to enforce restrictive covenants. Injunctions provide ultimate relief for a company victimized by a former employee's unfair competition -- they stop unfair practices. Unfortunately, an injunction is not simple to obtain. There are three things to keep in mind when seeking an injunction. First, in most cases there has been no crime or tort committed. Second, an employer is asking a judge to

restrict the ability of a “law-abiding citizen” to earn his or her livelihood. Third, the employer must not have done anything illegal in dealings with the employee.

### **Organizational Actions and Practical Alternatives**

While noncompete agreements do have their place, there are other avenues that, in practice, can minimize the discontent that may initiate turnover among highly skilled employees. The following list of actions represents some practical alternatives that could help minimize the legalistic approach (Murray, 1994; Sterk, 1993; Warneford, 1995; Weiss & Lincoln, 1998):

1. Provide training and development opportunities for employees. Highly motivated employees seek opportunities for self-development. If the company does not provide such opportunities, the employees will look elsewhere. When employees attend workshops or conferences, they may bring back ideas that contribute to the business.
2. Encourage employees to be “intrapreneurs”. When employees are encouraged to take ownership of their jobs and think outside the box concerning products and processes, many benefits can emerge. Business periodicals are filled with real examples of employees who have contributed to cost savings or additional revenues (e.g., Schein, 1997). Some employees will have a stronger need to be involved than others will, but the opportunities should be offered to all.
3. Allow employees to share rewards from their own ideas. Employees who leave to join competitors or start their own businesses often do so because of the opportunity to “reap the rewards” of their own creative ideas. When incentive systems reward employees with part of full ownership over their innovations, both parties gain benefits. Employees gain responsibility over their work and the chance to increase their earnings, while employers expand their business without expending much of their own energy.
4. Maintain fair and equitable compensation systems. Employees who leave are not necessarily seeking more money, only a fair compensation for their efforts. Sometimes their requests are trivial relative to the value they add to the company’s bottom line.
5. Treat all employees with respect and dignity. Many egos get battered and bruised, providing impetus for valuable employees to leave for greener pastures. Fair treatment of employees prevents conflict

and promotes a sense of commitment among employees. Commitment is a two way street – one should not expect employee loyalty if one is not willing to give loyalty.

6. Maintain trust by keeping promises. Employees form “psychological contracts” with employers – unwritten expectations and obligations perceived to have been promised by the employer. Management should present information in good faith, keep track of promises they have made (or appear to have made), and follow up with employees when such “contracts” appear to be breached.

### **Conclusions**

As suggested here, the courts have taken a cautious approach to noncompete agreements. The courts are interested in protecting the competitive advantages and trade secrets of businesses, but they are also very reluctant to restrict individuals from applying their talents to earn a living. As cases emerge, the legal issues will become more defined. In the meantime, what approach should employers take?

This question presents an interesting paradox. In order to motivate talented employees, one must provide them with opportunities that they may not find elsewhere. To facilitate such opportunities, more trust is required. As trust builds, these employees are given increased responsibilities in their jobs. With such responsibility, the employees require or come across information valuable to the business -- trade secrets, client lists, or in-depth knowledge of processes, products, or services. Access to this information builds power, which enhances the employees’ bargaining position with the employer. To retain the employees, a premium must be paid or the employees can offer their talents in the market. Turnover of this talent could be perceived as a threat to the business’ competitive advantage. Thus, the business owner sees the need for noncompete agreements.

Does this paradox represent reality, or simply a cynical, paranoid view of organizational life? Experience suggests a little of both. Some talented employees seek security, preferring the opportunity to develop their skills and continue to contribute to the success of the business. Economic self-interest, however, guides the more enterprising individuals to learn the business so that they can eventually “have their own shop,” or job-hop in pursuit of enhancing their own knowledge and financial gain.

How do noncompete agreements affect these two types of talented employees? In the case of the security seekers, organizational support is paramount, and as long as the environment reflects such support they will likely accept noncompete agreements. Since they seek security, they are less likely to perceive such agreements as a

threat. On the other hand, the enterprising individual will continually seek outside opportunities. To them, such noncompete agreements are a threat to their ability to earn a living. While they may be reluctant to sign agreements, they also present the most threat to the employer.

Thus, it seems that the best route for employers is to maintain a trusting environment, but openly pursue noncompete agreements when necessary. Care should be taken in their construction and use, and their terms should be reasonable, but they have a real purpose for employers. There will always be talented employees who seek new opportunities. By attending to employees' needs at work, the employer creates an environment where talented employees can flourish and the business can benefit. In such an environment, there may be less need for noncompete agreements, but it is possible that reasonable noncompete agreements will be more acceptable.

## References

- Carr, D. (1998). Covenants not to compete, trade secrets, and inevitable disclosure. Rough Notes, 14, 34-38.
- Center, W. & Lensman, T. (1997). Managing the design of Ohio CPA covenants not-to-compete. Ohio CPA Journal, 56, 34-38.
- Condiff, V. (1995). The departing employee toolbox: How to construct contracts meeting real business needs. Employee Relations Vol. 20, No. 3.
- Flynn, G. (1998). Raid the competition for workers, not their secrets. Workforce 77, 121-123.
- Freund, M. (1998). Protecting trade secrets under the Uniform Trade Secrets Act: Practical advice for executives. Security Management 42, 136.
- Holley, R. (1998). Looking at the legalities of non-compete agreements. Computer Reseller News 800, 139.
- Lake, R., Budden, M., & Lett, S. (1991). Trade secret protection. Internal Auditor, August, 43-38.
- Maatman, G. (1997). Sealing worker silence: Effective post-employment agreements. Risk Management, 44, 29-33.
- Martucci, W. & Place, J. (1998). Covenants not to compete: The delicate balance between employer and employee interests. Employment Relations Today 21, 77-83.
- McDonald, D. (1990). Post employment restrictions: Are they catching on? Employee Relations Today 44, 29-33.
- Marino, K. & Myers, J. (1994). Using reasonable restrictive covenants to protect your organization. Employment Relations Today 21, 77-83.
- Murray, A. (1998). Restrained behavior. Reed Business Information Ltd. September 19, 1-4.
- Restatement of Torts Sec 757 (1939).
- Russell, L. (1990). How to value covenants not to compete. Journal of Accountancy Sept.
- Schein, E. (1997). Moonlighting into the next millennium. P.C. Week, Dec. 15.
- Sterk, S. (1993). Restraints on alienation of human capital. Virginia Law Review 79, 383-420.
- Warneford, P (1995). When the brass jumps ship. ASM Communications, Inc. 1, 1-3.
- Weiss, G. & Lincoln, S. (1998). Departing employees can be a nightmare. Electronic News 44, 2210, 1-3.

Cases Cited

Arthur Murray Dance Studios v. Witter, 105, N.E. 2d 685, 703-4 (Ohio Ct. C.P. 1952).

Barden Cream & Milk Co. v. Mooney, 26 N.E. 2d 946 (Fla. App. 1988).

Dozier & Gay Paint Co. Inc. v. Dilley, 518 So. 2d 946 (Fla. App. 1988).

Duffner v. Alberty, 718 S.W. 2d 111, 113-14 (Ark.Ct App. 1986).

Frontier Corp. v. Telco Communications Group, Inc., 965F.Supp.1200(S.D.Ind.1997).

Loral Corp. v. Moyes, 219 Cal. Rptr. 3d 836 (Cal.App. 1985).

Lynch v. Bailey, 90 N.Y.S. 2d 359, 363 (App.Div. 1949).

Novelty Bias Binding Co. v. Shervin, 175 N.E. 2d 374 (Mass. 1961).

Therma-Guard, Inc. v. Cochran, 596 A.2d 188 (Pa Super. 1991)

Weber v. Tillman, 193 P. 2d 84 (Kan. 1996)

West Group Broadcasting, Ltd. v. Bell, 942 S.W. 2d 934 (MO.Ct.App.1997).

Wooley v. Embassy Suites, Inc., 278 *Cal.Rptr.* 719, 727(*Cal.Ct.App.*1991)