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Using Non-Competes To Protect A Company's Investment

[Kristie Prinz](#)**Q.**

I am looking for a lawyer who is experienced in employee non-compete agreements. We have an information technology outsourcing firm which has just expanded to six employees. We need direction to protect ourselves and our investment. What do I need to know about non-competes?

-- CT

**A.**

Non-compete agreements are often sought out by companies; however, it is important to understand that they are not universally enforceable in every state, and where they are enforceable, they will only be enforced against employees if they are drafted in such a way as to minimize the negative impact on the employees' ability to seek new employment. As a general rule, in states where non-competes are enforceable, they will have to be narrowly tailored to a very limited geographic scope and a very limited period of time.

Having said this, many attorneys and employers draft non-competes and require their employees to sign them, knowing full well that the agreements are unenforceable. The rationale is that the agreements will serve as a deterrent and will discourage competitive behavior by employees, even if they can never be enforced in a court of law.

While I always educate clients about the enforceability issues of non-competes and the strategy that many attorneys and employers adopt, I also encourage clients to consider the option of using narrower, non-solicitation terms and conditions to address many of the issues that they might want to address with a non-compete. For example, if the concern is that employees might take customers away with them when they depart, another option is to draft language in such a way as to prohibit the solicitation of customers for a set period of time. You could draft similar language to prohibit the solicitation of other employees for a set period of time as well. Drafting non-solicitation terms and conditions sidesteps the issues surrounding non-

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competes and often goes to the heart of the clients' real concerns, so it can be a very effective alternative to a non-compete.

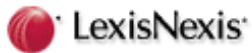
Of course, it goes without saying that employers also need to have confidentiality agreements with their employees, and that the terms and conditions of such agreements should protect the company's trade secrets and other proprietary information, as well as those of its customers, for an extended period of time after the employee leaves the job. This practice will help to protect the company as employees move on and leave the organization.

My recommendation is to consult with an attorney in your jurisdiction regarding the enforceability of non-competes and also to discuss possible alternatives to achieving the same result. Also, you should talk to such an attorney about employee confidentiality agreements, in order to confirm that you have adequate agreements in place with your employees. Such an attorney should be able to provide you the advice you need to make the best decision for your company on this issue.

-- Kristie Prinz

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