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## Gavel to Gavel: Protecting a business a balancing act

By: Erin Dailey August 5, 2015 0



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For many new hires, a big part of the first day on the job is spent completing a mountain of paperwork: insurance, benefits, noncompete, nonsolicitation, antipiracy.

Now, wait just a minute. Anti-what? Noncompete? Exactly what am I signing?

It's relatively common for a business to establish a covenant with its employees that sets parameters for competition and confidentiality. It's also not uncommon for those same restrictions to follow employees after they leave the company to work for another employer.

Businesses may also want to restrict former employees from soliciting customers/clients or attempting to hire away co-workers.

Efforts to protect business information and prevent departing employees from taking along clients or co-workers seem perfectly logical. However, are these restrictions enforceable?

A covenant not to compete or engage in outside employment activities during the term of employment is likely enforceable. However, a covenant not to compete after employment ends is generally unenforceable when applied to a nonowner employee. Oklahoma courts also typically frown upon noncompetes that attempt to invoke the law of another state whose laws are more favorable to noncompete agreements. Additionally, if a noncompete provision is found to be excessive or unenforceable, a court has the ability to throw out all related restrictive covenants.

As for nonsolicitation agreements, Oklahoma law allows businesses to restrict the ability of former employees to directly solicit established customers for at least one year after employment. However, the terms "directly solicit" and "established customers" are open to interpretation.

An anti-piracy agreement restricts a former employee's ability to hire away his or her former co-workers. The Oklahoma Legislature has determined that these types of restrictions are generally permissible.

Employees and employers both have rights when it comes to competition and confidentiality. While finding an enforceable balance between the two can be difficult, it's an important issue every business owner should consider.

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