ATTORNEYS SERVING PRIVATELY HELD BUSINESSES AND THEIR OWNERS

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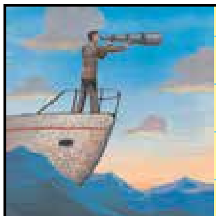

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How can you stop an ex-employee from giving away trade secrets or pilfering your top clients? One possibility is to have employees sign a "noncompete agreement" restricting what he or she can do. But such agreements are not always enforceable.

Background: An employer may require a noncompete to be signed as a condition of employment or upon "separation from service" (e.g., quitting, being fired or retiring). For instance, the agreement may entitle a departing employee to receive a severance package. The noncompete will generally limit employment activities in the same field for a time period.

However, the agreement cannot be overly restrictive and must be carefully worded. In other words, you cannot bar an ex-employee from pursuing his or her livelihood. The language in the agreement should be approved by an experienced attorney.

The enforceability of a noncompete, or a clause in a more substantive employment contract, generally depends on whether the restrictions are "reasonable" or not. When assessing the reasonableness of a noncompete agreement, the courts will weigh the following factors:

- The length of time the agreement remains in force
- The scope of the geographic area restricting the employee
- The reason for the employee's departure
- Whether the agreement restricts activities not in competition with the company
- Whether the agreement prevents the employee from working in his or her chosen field

A court's decision on violation of a noncompete usually turns on the extent of the employee's knowledge and his or her actions. For example, an employee may claim that he or she has no knowledge of trade secrets or other confidential

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Estate-planning Mix for Blended Families

Having a "blended family" with a spouse, children and grandchildren from a second or third marriage is no longer unusual. But these additions to the clan can complicate estate planning. Consider these ideas.

Will: Your will should be coordinated with other devices such as trusts. It can be amended through a codicil for minor changes or be completely rewritten to reflect major changes. For example, you might rework a will to include your spouse and your children from a second marriage.

Living trust: A living trust enables you to maintain control over disposition of assets. Typically, the trust is revocable, so you still have the ability to change the beneficiaries or allocations, and otherwise amend it during your lifetime. Because assets contained in a living trust avoid probate, this can be valuable to someone who wants to avoid public scrutiny.

Prenuptial agreement: This is no longer the exclusive domain of the rich and famous. A prenuptial agreement is often designed to protect assets before entering a second marriage and preserve wealth for the children of your first marriage.

Power of attorney: A power of attorney is a legal document authorizing the attorney-in-fact to act on your behalf. With a durable power of attorney, the power continues if you become incapacitated. The decision as to whom to designate as the attorney-in-fact can be a critical one for blended families.

Retirement plans and IRAs: It is likely that much of your wealth is socked away in qualified retirement plans, such as a 401(k), and traditional and Roth IRAs. Prior beneficiary designations should be updated due to certain life events such as a divorce, marriage or remarriage, or the birth of a child. These retirement plan and IRA designations supersede any declarations in your will.

Life insurance: As with retirement plans and IRAs, you may be encouraged to amend your beneficiary designations. Alternatively, you might revise the percentages of proceeds going to the respective parties. Once again, these beneficiary choices supersede other designations.

QTIP trust: A Qualified Terminable Interest Property (QTIP) trust is comparable to a regular marital trust. However, if the surviving spouse is entitled to a portion of your assets upon your death, he or she receives regular income payments, but not any principal. When the surviving spouse dies, the remainder passes to the designated beneficiaries.

These are just some concepts to consider. With assistance from your estate-planning advisers, create a comprehensive plan that meets your objectives. ✍

Limits on a Noncompete

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information, but only "general knowledge" of the business. In that case, the burden of proof is on the company to establish that the knowledge includes trade secrets or is otherwise confidential.

If a court finds that the employee has only general knowledge, or the agreement is simply designed to hinder the competition, there is no legitimate business interest being protected. As a result, the noncompete is not likely to be enforceable.

Finally, about one-third of states impose some restrictions on the enforceability of noncompete agreements because they interfere with an individual's basic ability to work and make a living.

In summary: It is important to handle noncompete agreements with extreme care and diligence. Obtain legal advice with respect to your company's situation. ✍

Paying Attention to Customer Complaints

If your company does a good job of handling complaints, it can foster future business and avoid potential legal pitfalls. For example:

- Acknowledge complaints and establish procedures for addressing them.
- Work toward a solution.
- When possible, give the customer options.
- Keep detailed records. This is the best protection in the event your company is sued.

Overview of New Tax Law Provisions

The new Protecting Americans from Tax Hikes (PATH) Act of 2015 extends various expired tax provisions and makes several key tax breaks permanent. Here is a brief overview.

Individual Tax Provisions

Child tax credit: Parents may be entitled to an additional refundable credit equal to 15% of earned income above $3,000. The PATH Act permanently preserves the enhanced credit.

Education credit: The American Opportunity Tax Credit (AOTC) is currently available for up to $2,500 of qualified higher education expenses. The new law permanently retains this enhanced AOTC.

Tuition deduction: Parents previously could deduct a portion of tuition and fees paid to a college. This deduction is retroactively extended through 2016.

Conservation donations: The new law retroactively reinstates tax breaks for contributions of conservation property to 2015 and makes them permanent.

IRA transfers to charity: Previously, an individual age 70½ or older could transfer up to $100,000 from an IRA to charities tax-free. This tax break is extended retroactive to 2015 and made permanent.

Sales taxes: In the past, a taxpayer could deduct state and local sales taxes in lieu of state and local income taxes. This optional deduction is revived retroactive to 2015 and made permanent.

Mortgage tax breaks: Prior to 2015, taxpayers could exclude tax on mortgage loan forgiveness on debts up to $2 million. Also, deductions were allowed for mortgage insurance premiums. Both tax breaks are retroactively extended through 2016.

Energy credits: Previously, you could claim a credit for 10% of the cost of home energy-saving expenses up to a lifetime limit of $500. The credit is retroactively extended through 2016.

Business Tax Provisions

Section 179 deduction: The maximum Section 179 deduction of $500,000, with a $2 million phaseout threshold, is restored retroactive to 2015. It is also made permanent with future indexing.

Bonus depreciation: A 50% bonus depreciation deduction is retroactively extended from 2015 through 2017. It will drop to 40% for 2018 and 30% for 2019.

Fast depreciation write-offs: Previously, taxpayers could use a cost recovery period of 15 years for qualified leasehold, restaurant and retail improvements. The faster write-offs are permanently available for 2015 and thereafter.

Research credits: The new law retroactively extends the research credit to 2015 and makes it permanent. It also enhances the credit for certain small businesses, effective in 2016.

Qualified small business stock: Under prior law, investors could exclude 100% of the gain on the sale of qualified small business stock (QSBS) acquired before 2015. The new law permanently retains the 100% exclusion for QSBS acquired after 2014.

Worker credits: A business could previously claim the Work Opportunity Tax Credit (WOTC) for hiring people from economically disadvantaged groups and veterans. The WOTC is retroactively extended through 2019.

Transportation benefits: The new law creates parity for employee transportation fringe benefits retroactive to 2015 and makes the changes permanent.

Finally, the law contains other provisions, including a two-year respite from the tax on "Cadillac" health insurance plans. Obtain details where needed.

Employer Liability for Employee Accidents

Can your company be held liable if an employee harms a customer or innocent bystander? The answer is "yes," even though you did not intend to create any harm, did not authorize action resulting in the harm and, in fact, played no role in causing the harm. Under common law rules, an employer may be "vicariously liable" for the actions of its employees.

Basic premise: Although a company is not automatically "on the hook" for all the wrongdoings of its employees, it may be vicariously liable for the negligent actions or omissions of actions committed by employees in the course of employment. For an action to be in the course of employment, it must be authorized by the employer or be so closely related to an authorized action that the employer should be held responsible.

Thus, there is a significant difference between an accident caused by an employee performing regular duties and one caused by an employee who is not. If the employee briefly detours from specific instructions, the employer may still be held liable. Conversely, if the employee acts completely on his or her own, it is less likely that a court would hold the employer liable.

Take the hypothetical example of a salesman who drives a company-owned car to a bar to meet friends. On the way home, the salesman is involved in an accident where a pedestrian is injured. In this case, it is likely that the company will not be held responsible. Reason: The company owns the vehicle, but the employee was using it for personal purposes when the accident occurred.

But suppose the company encourages its salespeople to take clients out for social engagements. If the salesman injures a pedestrian while treating a client to dinner and drinks, it is more likely that the company will be held responsible. Note: Other issues will arise if the salesman was intoxicated at the time of the accident.

Special rules come into play if an employee injures another employee. The workers' compensation laws generally protect employers from being sued by an employee if the employee causing the injury was acting within the scope of employment. Instead of taking the employer to court, the employee submits a claim to recover lost wages, medical bills, etc., under state law.

Caveat: This is only a summary of common law rules. Obtain legal guidance for actual incidents. ✍

BRIEFS

Social Media Privacy—At last count, almost half of all states in the union—23 to be exact—have enacted laws restricting how employers may use social media sites to discover personal information about employees and job applicants. More states are expected to follow this legislative trend. In addition, federal agencies are watching how employers use information gleaned from social media sites.

Dangerous Liaisons—In a new case, a female employee was accused of "stalking" a male co-worker, often stopping by his office to chat and barraging him with e-mails. The female was ordered to cease all contact with the co-worker. When she persisted, the company ordered her to undergo a mental examination. She then sued the company, but an appellate court in California said that the action by the employer was reasonable under the circumstances.

New Passport Law—Under the Fixing America's Surface Transportation (FAST) Act of 2015, your passport may be denied, revoked or limited if you have a "seriously delinquent tax debt" exceeding $50,000. This new rule, which does not apply to taxpayers with installment agreements with the IRS and those seeking "innocent spouse" relief, went into effect on January 1, 2016.

Vacation Pay—A hospital employee in New York who was hired to improve patient satisfaction failed to do so. She was fired before receiving accrued vacation pay. But state law doesn't require this type of payment if employees are properly notified. The employee read the manual stating that accrued vacation pay is forfeited upon termination, so she is not entitled to the vacation pay.