

Hiring a Lender from a Competing Bank? Read This First!

Banks often compete for talent, and the most qualified individuals may be subject to noncompete and nonsolicitation restrictions with a competing bank. This article outlines some of the key issues that banks should consider prior to hiring a lender from a competitor.

Does the Lender Have Enforceable Post-Employment Restrictions?

Prior to making a job offer to a lender, you should first require she provide you with any agreements with previous employers containing post-employment restrictions that she may have executed, such as noncompetition agreements, nondisclosure agreements, nonsolicitation agreements, stock option agreements, or any other general employment agreement. Legal counsel should review the agreements to determine the scope of a lender's post-employment restrictions—and the restrictions' enforceability. Wisconsin courts typically consider the following factors when determining whether a restriction is enforceable:

- Whether the territorial restriction is reasonable;
- Whether the duration of the restriction is reasonable;
- Whether the restriction is contrary to public policy;
- Whether the restriction is reasonably necessary for the protection of a legitimate business interest; and
- Whether the restriction is "harsh or oppressive" to the employee.

What Kind of Potential Claims Could Be Brought Against You?

Prior to hiring a lender with post-employment restrictions, you should be aware of the potential claims that an employee's previous employer could file against you, including, for example, tortious interference and misappropriation of confidential information and trade secrets.

- How Likely Is a Former Employer to File a Lawsuit Against You?

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- Having identified the lender's post-employment restrictions and any claims a former employer may bring to bear, you next assess the likelihood of a former employer filing a claim(s) against you. You should consider:
- Does any former employer have the reputation of being litigious?
- Does the lender know any former employer's trade secrets or confidential information?
- Is any former employer a direct competitor? • Is there a chance any former employer's clients or employees will try to follow the lender?
- How similar will the lender's new role be to her previous role(s)?
- Would you still employ the lender if she were legally prohibited from soliciting her former clients?
- Would any former employer have a valid claim?

How Can You Minimize Litigation Risk?

You can minimize your litigation risk by taking protective measures during the recruitment, job offer and post-hiring phases. The following is a non-exhaustive list of such measures:

- Have the lender warrant in writing that she has provided you with all of her agreements containing post-employment restrictions;
- Advise the lender not to solicit former coworkers;
- Advise the lender not to solicit or appear to solicit former clients for the duration of the restrictions;
- Modify the lender's role and duties to avoid a breach (if necessary);
- Ask the lender to seek a waiver from all relevant former employers, which may require you to make a payment to the former employer; and
- Have the lender warrant in writing that she will not disclose any former employer's trade secrets or confidential information.

What If a Competing Bank Is Trying to Hire Your Lender?

If a competing bank has hired, or is attempting to hire, one of your lenders, you should determine whether the lender is subject to any post-employment restrictive covenants with your bank. A copy of any such agreement should be shared with legal counsel to determine what options you may have to limit the lender's ability to work for the competing bank.



Reinhart Can Help

The professionals at Reinhart Boerner Van Deuren s.c. are available to advise you on post-employment restrictive covenants in the banking industry. Please feel free to contact John Reichert, Katie Triska or your Reinhart attorney with any questions.

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