

Is It Time to Update Your Noncompete Agreements?

When was the last time your company engaged legal counsel to review its noncompete agreements to determine their enforceability? In this rapidly evolving area of law, noncompete agreements should be regularly reviewed and updated. This e-alert identifies common problems that may render a noncompete agreement unenforceable.

1. **Lack of Time Limitation**. In Wisconsin, noncompete agreements should contain a reasonable time limitation on the employee's post-employment restricted activities. The lack of a time limitation, or a time limitation that is unreasonable, may result in the agreement being adjudged unenforceable.
2. **Insufficient Consideration**. Wisconsin law provides that merely offering continued employment to an existing employee in exchange for signing a noncompete agreement is generally insufficient consideration. Instead, employers should offer existing employees something of additional value (e.g., bonus, raise, promotion, etc.). Employers should review the consideration promised to their employees in their agreements, confirm it is sufficient, and also confirm that their employees actually received the promised consideration.
3. **Change in Job Duties**. Have the employee's job duties changed since he/she signed the noncompete agreement? If so, the agreement may no longer adequately reflect the employee's duties, which in turn may not adequately protect the employer. An employee's noncompete agreement should be reviewed each time there is a material change in his/her duties.
4. **Change in Territory**. Has the employee's assigned territory changed since he/she signed the noncompete agreement? The noncompete agreement should reflect the employee's current territory, otherwise a court may be less likely to enforce it.
5. **Unreasonable Activity Limitation**. Generally, noncompete agreements should restrict employees from engaging in only those activities in which they recently engaged on behalf of the employer. If a noncompete agreement restricts employees from engaging in activities not recently engaged in on behalf of the employer, then the restriction may be unenforceable.

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Employers should correct any problems in their noncompete agreements before a dispute arises with a departing employee. Employers' noncompete needs frequently change over time; therefore, it is critical that noncompete agreements are regularly revised to reflect the employer's current needs. Due to the complexity of this area of law, employers should work with legal counsel experienced with noncompete agreements to ensure the agreements comply with legal requirements.

Please contact your Reinhart attorney or any member of Reinhart's Labor and Employment group if you have any questions regarding your noncompete agreements.

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