NON-COMPETE, NON-SOLICIT & TRADE SECRETS

Our Non-Compete, Non-Solicit, and Trade Secrets Practice is geared towards protecting your interests during times of employment transition. Whether you are a key employee seeking to continue working in the same field, or the employer who may face competition by a departing employee, your interests deserve the protection that our attorneys can provide.

Talented employees, key customer relationships, and vital intellectual property and know-how (including trade secrets, proprietary business information, and corporate technology) lie at the core of successful businesses. It has become increasingly common for businesses to use agreements that prohibit competition, or that limit the solicitation of customers, in an effort to protect these vital interests.

From the employer's perspective, these interests can be placed in jeopardy when a departing employee diverts vital business assets belonging to their former employer. In an increasingly global economy, employee mobility is prevalent and can ripen into more than just the departure (or termination) of the individual — without protection, the employer's most valuable assets can be put at risk, or worse, walk right out the door.

From the perspective of the departing employee (or his or her new employer), the ability to work and compete can be unfairly limited by an overbroad or unduly burdensome non-competition or non-solicitation agreement that goes far beyond protecting the former employer's legally protectable interests. If left unchecked, the employee may be unfairly deprived of the ability to earn a livelihood.

The attorneys in our Non-Compete, Non-Solicit, and Trade Secrets Practice are prepared to protect our clients' interests by safeguarding crucial business assets, promoting fair business practices, and facilitating the transition of employees subject to post-employment restrictive covenants. Above all else, we strive to insulate our clients from unfair competition.

Preventive Measures

Our attorneys develop, draft, and review key documents that are pivotal to setting the stage for the transition of employees through the post-employment restrictive period. Covenants typically contained within non-solicitation, non-competition, and confidentiality agreements can be useful, effective tools, but they must be carefully drafted so as not to be construed as an unenforceable restraint on trade and lawful competition.

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- **Non-Compete Agreements** Typically contained in some form of employment agreement, these covenants seek to prevent a former employee from working for a competitor within a certain geographic area for a specified period of time after departure from his or her previous employment.
- **Confidentiality Agreements** These agreements are often used to require employees to acknowledge the sensitivity of corporate information (such as trade secrets, proprietary information, intellectual property, and information technology), and to create a binding obligation on the employee not to use or disclose that information in their post-employment endeavors.
- **Non-Solicitation Agreements** When precisely drafted, these covenants prohibit departing employees from soliciting key customers that resulted from the investment of time, resources, and goodwill by the employer. Covenants prohibiting solicitation are also quite common in connection with the sale of a business, along with its goodwill.
- **Anti-Poaching or Anti-Raiding Agreements** Properly prepared anti-poaching or anti-raiding covenants can prevent a former employee from soliciting his or her former coworkers.

Litigation - When Needed

Quite often, a departing employee or his or her new employer will choose to disregard even a properly drafted restrictive covenant. Conversely, former employers may seek to enforce covenants that are unreasonable and overbroad — i.e., agreements that go beyond protecting their "legitimate interests."

The litigation team of our Non-Compete, Non-Solicit, and Trade Secrets Practice has decades of experience fighting to protect our clients' interests in state and federal court — both at the trial and appellate levels. Whether in federal court litigating claims under the Defend Trade Secrets Act of 2016 (18 U.S. C. § 1836), or in state court under New York's common law, we are prepared to vigorously protect your interests regardless of the forum.

Our litigation team has amassed a wealth of knowledge and skill in pursuing and defending against injunctions, guiding clients through arbitration and litigation proceedings, and successfully vindicating our clients' rights at hearing or trial. We recognize that each situation is unique and that client objectives often vary. We use our substantial knowledge and years of experience to aggressively pursue negotiation and litigation strategies tailored to the needs of the people and businesses we serve.

Other Services

- Development and creation of a comprehensive intellectual property preservation program: creating, drafting, and reviewing policies regarding the ownership, protection, and retention of company-sensitive information and data.
- Design and implementation of a human resource program intended to train employees about unfair competition, its various forms, its impact, and the attendant consequences for violations.

Experience

Resolved multiple non-competition claims on behalf of an employer in the medical industry.

Scott Paton and Glen Doherty represented a dentist who was allegedly in violation of a Restrictive Covenant. The Restrictive Covenant stated for two years following her employment, our client could not work for a competitor with an office located within 15 miles of the defendant's dental practice. Critically, the covenant did not center on whether the employee herself was working within that 15 mile radius, but instead was focused on whether her new employer had an office within the radius.

In order to justify a non-compete clause against a learned professional -such as a dentist- companies typically claim those professionals are "unique." Scott and Glen were able to convince the court this legitimate interest could only be related to where the "unique" person works- and not where her employer may have other offices.

In the end, the court decided the Restrictive Covenant is valid only to the extent that it restricts our client from working at a dental office located within 15 miles of the defendant for the two years following employment.

Press Releases

Labor and Employment Attorney Charles H. Kaplan Joins Hodgson Russ
Hodgson Russ Press Release, March 24, 2020

Publications

FTC Adopts Rule Banning Most Non-Competes and the Legal Slugfest Begins
Hodgson Russ Non-Compete, Non-Solicit, and Trade Secrets Alert, April 24, 2024

FTC Takes Direct Aim at Employee Non-Compete Agreements
Hodgson Russ Non-Compete, Non-Solicit, and Trade Secrets Alert, January 6, 2023

New York Employment Law
New York Law Journal, October 7, 2020

Using Non-Competes In Employee Handbooks
Hodgson Russ Non-Compete, Non-Solicit & Trade Secrets Alert, March 12, 2020