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NEWSLETTER

Broadcast Non-Competes

December 2011

So, your news anchor or morning drive host is hugely popular in the market, and her employment contract is about to expire. Your competition would love for her to join their team, and is willing to pay her more. When renegotiating her contract you should include a non-compete clause, right? Maybe not. A number of states, including New York, Massachusetts and California, have passed laws that restrict the ability of broadcast employers to enter into non-compete agreements that prevent their employees from going to work for the competition.

In New York, broadcast employers are prohibited from requiring an employee or prospective employee to enter into an agreement that would restrict the employee's ability to obtain employment in a specified geographic area, for a specific period of time or with a particular employer or industry. The prohibition applies not only to on-air personalities, but to off-air employees (excluding "management employees") in television, radio, cable and "internet or satellite-based services similar to a broadcast station." Employees of "any other entity that provides broadcasting services such as news, weather, traffic, sports, or entertainment reports or programming" are also included within the ambit of the prohibition. New York's law is primarily concerned with restrictive covenants that continue to bind the employee after his or her employment with a particular broadcaster has ended; the law does not prevent a broadcast employer from restricting its employee from working for the competition during the term of his or her employment contract.

Like New York, Massachusetts similarly forbids broadcast employers from entering into "[a]ny contract or agreement . . . [that] restricts the right of [an] employee . . . to obtain employment in a specified geographic area for a specified period of time after termination of employment." Massachusetts' law applies to television and radio

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station employees as well as employees of "any entities affiliated with the foregoing" (exactly which "affiliated entities" are included within this broad language has yet to be formally adjudicated). California takes an even broader approach. There, all employers (with certain limited exceptions) are prohibited from entering into a contract "by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind . . . ."

Even if not located in a state with an express statutory prohibition on broadcast non-competes, broadcast employers should be aware that the law generally tends to disfavor non-competes, particularly those that restrict a former employee from working for the competition for a long period of time or within a wide geographic area. Employers, therefore, should carefully consider whether such an agreement is really necessary. Factors to think about when making that determination include the seniority of the employee, his or her ability to obtain employment with the competition and the damage that would be done to the employer should the employee be able to use the goodwill and confidential information that was developed as a result of his or her employment. The key in all of these situations–including states that prohibit non-competition agreement–is to discuss the specifics surrounding your talent with competent legal counsel so that you can develop a strategy that protects the legitimate interests and investment your company has made in developing one of its most valuable assets.