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Crafting the Non-Compete Agreement

Every employer, to become successful, must rely on its employees. Enabling employees to excel at their job normally requires teaching them the skills of the trade and developing business relationships with people in that field. The concern most businesses have is once an employee has learned the skills and has established relationships, they will set up their own shop and take business away using those skills and contacts. For this reason, a non-compete agreement can be a useful tool in helping an employer protect against an employee from unfairly benefiting from the knowledge gained on the job.

Generally speaking in the State of Florida, contracts that restrict trade are void. Pursuant to Florida Statutes Section 542.33, the Florida Legislature has provided limited exceptions to this rule. Generally, a non-compete agreement will be enforceable if it is a type of trade or business which justifies protection. Accordingly, businesses that have specialized training or trade secrets that are specialized, will typically be considered companies with legitimate protectable business interests. A non-compete agreement will not be enforceable if it is contrary to the public health, safety or welfare.

Next, prohibited activities in a non-compete agreement will have to be reasonable with regard to scope, duration and geographical location. Whether the non-compete is considered reasonable, often depends on the type of trade that is restricted. A traditional business, like a dentist's office, may have a longer time duration (in Florida anything longer than two (2) years is presumed unreasonable) to prohibit an employee from competing but may have a smaller geographic location (normal area in which a client base for a dentist office is located). On the other hand, in the context of an internet company, a non-compete agreement may be



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reasonable with a much larger geographic basis, but may have a much shorter time duration due to the incredibly rapid progress of businesses on the internet.

All non-compete agreements shall be interpreted by the Court on a case-by-case basis to determine if that particular agreement is reasonable under the circumstances. Prior to an employer hiring an employee who will have access to confidential information or trade secrets, it is highly advisable to contact an attorney to discuss whether a non-compete would be right for them.



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