

Virginia Non-Compete Agreements for Employees

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Over the past 10 years or so, our firm has noticed that businesses in Virginia use “non-compete” agreements in their employee hiring processes far more than before. This article briefly discusses the background and use of non-compete agreements in Virginia.

What is a Non-Compete Agreement

A non-compete agreement is merely a written agreement where an employee agrees not to leave an employer and then compete for the same business when they leave their employment. Typically, non-compete clauses are inserted in employment agreements by an employer during the hiring process and have become somewhat commonplace. Common characteristics of non-compete agreements include duration of the non-competition period, limits as to competition for certain customers and the geographic boundaries of the non-competition area.

Issues Which Commonly Arise in Non-Compete Agreements in Virginia

Non-compete agreements in the Commonwealth of Virginia tend to be viewed as somewhat disfavored by the courts and have been viewed somewhat negatively as a type of restraint on commerce. As a result, in Virginia, non-compete agreements have a better chance of success, if enforcement is attempted, the more narrowly tailored that they are. Courts in Virginia will enforce reasonable non-compete agreements. Non-compete agreements, in this narrow sense, must: (1) protect a bona fide employer’s interest; (2) be reasonable; and (3) not be against public policy. There are a number of specific features that come into play in Virginia with respect to these 3 variables. Typically, a valid business interest considered by the courts is the extent to which a non-compete agreement protects the employer from a former employee poaching existing customers, trade secrets, or other confidential information.

Non-Compete Agreements Should be Reasonable and Drawn Narrowly

Keeping in mind that these types of non-compete agreements must be drawn narrowly, courts in Virginia will generally not enforce agreements that are overbroad or unreasonable. Some typically problems in non-compete agreements include the following: (1) agreements that impose overbroad geographical limitations (i.e. a prohibition on competing in the United States where the service area is only a portion of Virginia); (2) unreasonable time constraints (i.e. a 20-year restriction; although each determination is based on the individual facts of a case); (3) agreements prohibiting an employee from working in any capacity for a competitor; (4) agreements whose terms are not clear or discernible; (5) agreements for licensed professionals (physicians, lawyers, etc.) which may be barred on public policy grounds; and (6) agreements that unfairly burden an employee’s ability to obtain alternative employment.

Other potential issues with non-compete agreements exist and it is important for an employer to structure a clear and fair non-compete agreement in order for it to be upheld by the Virginia courts.

Contact Us

When entering into a non-compete agreement or when questions arise as a result of the non-compete agreement it is very important to seek counsel before signing this type of agreement or when questions of enforcement arise. Our law firm represents employees and businesses with respect to non-compete agreements. We can be contacted at (703) 668-0070 or at www.berrylegal.com for legal advice and consultation in such matters.

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Practice Areas

Virginia Employment Lawyers