

Employment Law Corner

Monthly Report



FOLEY & FOLEY^{PC}
ATTORNEYS AT LAW

April 2023

April Updates

[New Law, New Poster:
PUMP Act](#)

[Happy Spring!](#)

[More Money, More
Problems?](#)

[Some States Are Easing
Child Labor Laws: Is
Yours?](#)

After Recent Changes, How To Protect Your Business Now

The days of boilerplate non-competes and severance agreements are over. Employers must tailor these business protection tools considering new developments. Earlier this year, the FTC dropped a bomb by banning almost all non-competes ([FAQs here](#)). Then the Senate and the House reintroduced the [Workforce Mobility Act](#), which narrows the use of non-competes. If that wasn't bad enough, the National Labor Relations Board (NLRB) is going after non-disparagement and confidentiality language in severance agreements because they violate an employee's "Section 7" rights to discuss conditions of employment. What is a business to do?

Even with these changes, we all know a company can and should protect its goodwill and guard against the release or use of its trade secrets or other confidential information. How? Through well-crafted agreements with its exempt, white collar and/or highly compensated employees.

DID YOU KNOW that if your company furloughed employees without pay during the COVID-19 pandemic and then rehired them that any confidentiality, nondisclosure, non-solicitation and non-competition agreements (a/k/a "restrictive covenant agreements") that those employees signed before the furlough may now be invalid? If you have not put new agreements in place, your company's goodwill, trade secrets, hard-earned clients and confidential information may not be properly protected.

DID YOU KNOW that your restrictive covenant agreements cannot prevent ordinary competition, meaning the right of employees to use their knowledge, experience, and skill to compete against your company? Employers who fail to limit the scope of their restrictive covenant agreements to the protection of goodwill, trade secrets and confidential information could have their agreements deemed invalid.

DID YOU KNOW that Courts will not allow an employer to "appropriate the goodwill of the employee" through a restrictive covenant agreement? If an employer fails to clearly and carefully distinguish between an employer's goodwill and an employee's goodwill in their agreements, those agreements might not be enforced by a judge or a jury.

DID YOU KNOW You need to check your severance agreements and any policies that impair employee workplace speech? The best practice is to update the confidentiality and non-disparagement language from any of your Agreements. We have scrubbed clean, NLRB approved language we can supply for a fixed fee. [Contact us.](#)

Protect Your Business

If you think your restrictive covenant agreements may not pass muster, fear not! We can help you put new agreements in place. We have a comprehensive fixed fee service, crafted to comply with the FTC rule and your state and local authority. Our [Preserve Confidential Information – Secure Customer & Employee Relationships – Safeguard Goodwill](#) service reviews all restrictive covenant agreements, individual employment agreements, personnel policies, and your handbook to ensure compliance.

Give us a call at 508.548.4888. [We can help.](#)

[What is the Employment Law Corner?](#)

At [Foley & Foley, PC](#) protecting your business and reducing your exposure and risk is our endgame. We get it! We created this Employment Law Corner to keep you up to date on current topics. Each month we will provide an update by one of our seasoned lawyers that will help your team successfully navigate employment law compliance obligations and Human Capital Risk Management so that you can remain focused on what you do best – operating your business.

[Who We Are](#)

We want to [introduce ourselves](#) to those we have not met:

- We represent employers exclusively from coast to coast in all facets of employment law and litigation. Our mission is solving problems and anticipating issues so you can concentrate on your business.
- We are constantly searching for the trends and upcoming issues in the law that will impact our clients. We want our clients to be informed and ready. Our familiarity with the workplace and our approach sets us apart from other law firms, making us well equipped to handle your unique needs.
- We are not like other firms: Anyone can tell you what the law states and its limits. That's easy. We find creative solutions within those restrictions that move your business forward. We seek to minimize your risk so you can get back to business. Learn how we can help your business: [Foley & Foley PC attorneys specializes Employment and Labor Law in the Public and Private Sectors \(foleylawpractice.com\)](#)

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