

Employment Law Corner

Monthly Report



FOLEY & FOLEY^{PC}
ATTORNEYS AT LAW

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June Updates

[Beauty and the Beast: Toxic Workplace](#)

[The DEA Puts Weed In Play](#)

[DOL: Don't Let AI Do All the Work](#)

Restrictive Covenant Agreements: Don't Throw Out the Baby with the Bath Water

Have you heard the phrase “restrictive covenant agreement”? If you are a business owner who wants to protect what is most valuable to your business, you need to be familiar with these critical and sometimes controversial tools—and their benefits and limitations.

A restrictive covenant is a type of agreement that employers use to protect their goodwill, confidential information, intellectual property and clients, among other things. Restrictive covenant agreements might include non-compete, non-solicitation, non-disclosure, anti-raiding or non-poach agreements, confidentiality and nondisclosure agreements.

These agreements can prevent employees from working for your company's competitors, soliciting your clients or employees, or disclosing your confidential information for a certain period after leaving your employment. For these protections, these agreements are highly valued by business owners, maligned by employees and closely scrutinized by the courts and their judges.

In recent years, restrictive covenant agreements, particularly non-compete agreements, have become a hotly contested topic in both the courts and the legislature. Five states have outright banned non-compete agreements - California, Colorado, Minnesota, North Dakota, and Oklahoma. In addition, the Federal Trade Commission recently ruled that it considers non-compete agreements to be an illegal restraint on trade. (Whether the Commission's opinion will become law remains to be seen.) There are valid concerns among employers over the effectiveness and enforceability of these important agreements. **Keep in mind that the attack on non-competes does not mean there are no other valid protections.**

How do you make sure your restrictive covenant agreements will be enforced and will protect what is most valuable to your business?

- First and foremost, the agreement must be reasonable in scope, meaning its duration, subject matter, and where applicable, its geography. The restrictions should be no broader than what is required to protect the employer's legitimate business interests.

- Second, the agreement should not impose any undue burden on the employee. The agreement should not unreasonably prevent the employee from finding new employment.
- Third, the agreement must be drafted in a manner that conforms with the law of the state in which the employer wishes to enforce the restrictions and where the employee works.
- Finally, the employee must voluntarily and knowingly agree to the restrictions in return for good and valuable consideration, such as a new job, a cash payment or some other benefit to the employee.

Crafting an enforceable and effective restrictive covenant agreement takes effort, time and experience. If it seems daunting – we can help. We keep up with all the federal, state and even local laws, so you do not have to. We have the resources to help you evaluate applicable laws, craft appropriate agreements, and advise you on how to enforce them! We can review your current agreements to see if they hold up and we can craft new ones that will.

Contact us.

Who We Are:

- 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 is 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 specialize in Employment and Labor Law in the Public and Private Sectors (foleylawpractice.com).**

Meet Timothy Kenneally

Attorney Tim Kenneally has practiced law with Foley & Foley PC since 2008 and has been a litigator his entire career. Attorney Kenneally's practice involves the representation of clients in matters involving employment and labor law, data security/personal information protection, insurance, contracts and litigation.

For more info, check out his full bio [here!](#)



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