

Is Your Non-Compete Enforceable?

Many business owners and employees mistakenly believe non-competition agreements (or “non-competes”) are either unenforceable by law, or will not be enforced by their employer. Don’t jump to these conclusions. Both Kansas and Missouri courts regularly enforce non-competes. For the business owner, a properly drafted non-compete can be crucial to the ongoing success of your business. For employees, you should know that while non-competes are often enforceable, your employer’s right to control your post-employment activity is not unlimited.

A good non-compete agreement will prohibit a former employee from 1) competing with the former employer, 2) soliciting clients and employees of the former employer, and 3) using or sharing trade secrets or confidential information of the former employer. However, these restrictions will be upheld only so far as reasonably necessary to protect the employer’s “legitimate business interests.” These matters are often up for debate. The classic courtroom struggle lies between the legitimate interest of the employer to protect its investment in client relationships and trade secrets, and the legitimate interest of the employee to be free to move about the marketplace from job to job.

For the employer, the cost of drafting and enforcing a solid non-compete agreement is minimal when compared to the potentially monumental risk of loss. If a key salesperson leaves without a non-compete, he or she could take the company’s clients and employees along for the ride, with limited legal repercussions. For the employee, there is always some risk of litigation if you go to a competitor, but you should not assume your non-compete is enforceable just because the language (or your boss) is threatening.

