

Changes to Employee Noncompetition Agreements

On January 1, 2008 a new Oregon law regarding employee noncompetition agreements became effective changing ORS 653.295. Prior to this time, noncompetition agreements could be very broad, they had to only “reasonably” restrict a former employee in geographical location and time. It also allowed the restriction to be placed on just about any employee, provided the employer had a protectable interest and the noncompetition agreement was entered into on or before the start of employment. The term “reasonable” was not defined, but was particular to each case. In 2006, one 7th Judicial District judge enforced a five year noncompete against a doctor effectively prohibiting that doctor from competing with the former employer within the mid-Columbia Gorge area. The 7th Judicial District of Oregon includes Wasco, Hood River, Gilliam, Sherman and Wheeler counties.

The changes to the law impose new requirements for noncompetition agreements and give a better idea of what restrictions are allowed. Under the new law:

- 1) the employer can prohibit the employee from competing with him or her for up to a maximum of two (2) years from the date of termination of employment.
- 2) if the employer is going to require a noncompetition agreement, the employee must be notified of the requirement in a written “offer of employment. While that notice must be received by the employee at least two weeks prior to starting employment, the terms of the noncompete do not have to be part of the notice, instead the employer only has to notify the prospective employee that one will be required as a condition of employment. If the person is already an employee, the noncompete must be paired with a bona fide advancement.
- 3) a noncompetition agreement can be used only for employees who possess trade secrets or confidential information, are exempt from overtime, and have a salary of at least \$62,500 annually.

The 2008 law is not retroactive. If you have a non-competition agreement signed prior to January 1, 2008, the old rules apply. Also if the employee does not meet the requirements of part 3 above, the employer may still be able to enforce a noncompetition agreement. Or if there is a prospective or current employee that does not fall within the full noncompetition agreement factors, the employer still may be able to restrict that employee from soliciting the employer’s current clients. Contact one of our lawyers to discuss either particular circumstance.

Before entering into any employment related agreement, both the employer and the employee should consult an attorney. Do not rely on this information or any information you get on the internet as being all that you need for your particular situation. Also note that these restrictions do not apply to noncompetition agreements made in the sale of a business.