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Ask the Lawyer: Is Signing an Employment Agreement Mandatory?

By Mathew B. TullyQuestion:

Can an employer fire a current employee or a new hire for refusing to sign an employment agreement?

Answer:

New York state is an employment-at-will state, meaning an employer can generally fire an employee for any reason, barring any unlawful discrimination. If an employee refuses to sign a non-compete agreement, such refusal could give an employer reason to distrust a current employee or a new hire. And the employer would be acting within the law if it chose to terminate him or her.Employers have many reasons for wanting current employees or new hires to sign an employment contract that contains non-solicitation, non-competition, non-disclosure, or other restrictive covenants. Businesses, particularly those in the area's growing technology sector, do not want employees using the knowledge and experience they acquired while working for them to work against their interests at a competitor.There is little question that employers hold the upper hand in employment matters, and some employees may feel that they have no choice but to sign an employment agreement with restrictive covenants. Simply because the employer is holding all the cards does not mean it can impose unreasonable and anticompetitive restrictions on employees.As the New York State Court of Appeals noted in Roberts Associates, Inc. v. Strauman (1976), an employer may experience difficulty in enforcing an employment contract if its restrictive covenants are not reasonable in terms of time and geographic scope, if they do not protect the employer's "legitimate interests," and if they harm the general public and unreasonably burden the employee.Employees need to remember that even if part of their employment contract is found to be overly broad, it could still be partially enforceable. Partial enforcement may be justifiable so long as the employer can show it did not demonstrate an "overreaching, coercive use of dominant bargaining power, or other anti-competitive misconduct," the Court of Appeals said in BDO Seidman v. Hirshberg (1999). The Court of Appeals in BDO Seidman found the overly broad restrictive covenants imposed on an employee to be partially enforceable when they were included in a contract offered to him as a condition of his promotion.If the overly broad restrictive covenants are included in a contract offered as a condition of employment — and not a condition of a promotion — it is a different story altogether. In Lionella Prods., Ltd. v. Mironchik (2012), a New York County Supreme Court found that a non-disclosure agreement's overly broad covenant was not partially enforceable because the employer would not have hired the employee had he not signed the contract. Further, the employer used the covenant to forestall competition and it did not act in good faith by not placing time limits on the non-disclosure restriction.Lastly, it is important to remember that if an employer fires an employee for refusing to sign an employment agreement, he or she should still qualify for unemployment benefits. Generally, people do not qualify for unemployment benefits if they are terminated for misconduct. In Matter of Waszkiewicz (1999) the New York Supreme Court, Appellate Division, Third Department

decided that an employee’s refusal to sign a conflict of interest and confidentiality agreement does not constitute disqualifying misconduct, reversing the underlying Unemployment Appeals Board decision.Employees should always have a lawyer review an employment contract before signing it. If the employees are not comfortable with the contract’s terms, they should have their attorney attempt to negotiate more favorable terms with the employer.