

Protect Your Trade Secrets: Loopholes in Employment Contracts

And they're off! With the economy rousing from its recession-induced slumber, employers are returning to hiring mode and employees are quitting their jobs in increasing numbers. In 2011, 22.2 million private sector workers quit their jobs, up seven per cent from the previous year, according to the US Bureau of Labor Statistics.

Many of these on-the-move employees may end up at their former employers' competitors. Employers commonly use confidentiality agreements, non-compete agreements and non-solicitation agreements to protect their trade secrets and guard against unfair competition. These contracts, however, by nature or design, are not always as restrictive as hoped.

4 Common Mistakes

Here are some shortfalls found in employment contracts, gleaned from recent State and Federal Court rulings nationwide:

1. Unreasonably broad and overly burdensome non-compete agreements

Non-compete agreements may not be able to prohibit all business dealings between customers and former employees.

In *ISCO Industries, LLC v. Erdle*

(2011), the U.S. District Court for the Eastern District of North Carolina ruled that the non-compete agreement for a salesman at a customized piping solutions company was unreasonably broad in scope and overly burdensome. The contract, the Court noted, would have prohibited the salesman from selling "any product or services to any existing or prospective customers regardless of whether the product or services being sold are in competition with [the former employer]." Further, it prohibited the former employee from accepting "any payment from a third party doing business with [the former employer]."

2. Failure to show harm

Former employees sometimes dance along their non-compete agreements' restrictions, and former employers often jump the gun in crying foul.

In *Arizant Holdings, Inc. v. Gust*

(2009), the U.S. District Court for the District of Minnesota ruled that the former employee of a patient warning system producer and seller did not violate the terms of his non-compete contract by serving as a consultant and president for a start-up company that produced and

sold similar technology. During his tenure as president, the former employee was not involved in any of his company's sales, none of which occurred in his former sales territory. To avoid summary judgment, the Court said, the former employer "must do more than speculate about how it might

have been harmed; it must submit evidence that it was harmed."

3. Abrogating contracts with restrictive covenants with successive contracts

In *Arizant*

, the former employee had signed a confidentiality agreement. At the end of his employment, however, he signed a separation agreement designed to contain the "entire agreement between you and the Company with respect to your employment and separation from employment." The Court found that this contract made the previously signed confidentiality agreement a "dead letter."

4. Confusing confidentiality covenants with other covenants

Generally, a confidentiality agreement prohibits a former employee from disclosing protected information (e.g., trade secrets) to outside parties. Without a non-compete agreement or a

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non-solicitation" LITERALLY THE BEST MONEY I EVER SPENT!!!! The USAF charged my son with Article 92, Violate General Order and Article 128, Simple Assault. I spoke to many attorneys who said to me, "Your son will be convicted of the Simple Assault because putting lotion on someone's face is considered an assault as it is an unwanted touch." They all wanted me to work on a plea deal with the government that ended with my son being discharged, spending time in the brig and having a federal conviction for the rest of his life. Knowing that this just didn't warrant a federal conviction, bad conduct discharge and time in the brig, I was on a search to find an attorney who would look at this case for what it was: a couple of 19-21 year-old immature young men horse playing. I was looking for someone who would say something different; someone who would be able to look at the case from more than one view. When I spoke to Mr. Rinckey, I thought I was going to get the same ole speech, but to my surprise, I IMMEDIATELY felt at ease and I knew right then that he was going to be my attorney (not sure if he knew it at this time). He took on this case with vigor and ZERO FEAR of the government! He wanted them to know that this was NOT going to go away with any plea deal! And he went to work! Then, LITERALLY 2 DAYS BEFORE trail the government added an additional charge, which was Article 134, Unlawful Entry. Mr. Rinckey stayed focused, developed a plan, and off to trail we went. He was so prepared, calm and at ease. I remember him saying to me, "I am ready to try this case." And yesterday - 14 APR 2016 - my son was found NOT GUILTY on ALL CHARGES AND SPECIFICATIONS!!! Yesss!!! You know, it's always hard to find money for an attorney, but I learned one thing with this case. Although I thought we couldn't afford an attorney, the truth of the matter was that we couldn't afford NOT TO HAVE an attorney. I only wish I had found Mr. Rinckey sooner, but that's okay. I have found my ATTORNEY for life," Y.W. on Founding Partner on Greg Rinckey, Esq.

Prior results do not guarantee similar outcomes.

"Well Informed Legal Advice" - G.C.

Received sound and well informed legal advice. Responses were timely and extremely relevant. - G.C. on client relations attorney Derrick T. Hogan

“Great Service” – E.S.

I want to thank you all for the great service rendered [to] myself and family. - E.S. on Client Relations Attorney Derrick Hogan

“High Regard” – R.E.M.

“Your firm held my best interests with high regard... I thank you for your efforts.” - R.E.M.

“Prompt and Efficient” – K.B.

"Prompt and efficient in processing claim, all correspondence handled in prompt and efficient manner." – K.B.

“Impressed” – W.W.

"As a retired heavy user of attorneys, I'm impressed with your concerns and your efforts to stay in touch with your clients. Its damned good management aligned with top notch expertise." – W.W.

“Excellent Service” – J.R.

"Excellent service, very professional, and understanding and considerate of clients needs. Attorney was very approachable and there was a very good comfort level." – J.R.

“Full Service” – K.M.

"I like the fact the office is close enough to where I work and live and that it is a full service practice, not just estate planning." – K.M.

“Professional and Informative” – J.H.

"Professional and informative... I was pleased with the handling of the case. I was treated as a person, and kept abreast of all aspects of the case. Thank you all." – J.H.

“Thanks So Much” – J.D.

“Without your firm, I would not have known of my claim. Thanks so much!” – J.D.

“Gets Results” – F.P.

“Most certainly – The firm gets results!” – F.P.

“Outstanding” – M.P.

“Results are outstanding.” – M.P.

“Quite Satisfied” – R.W.

“I am quite satisfied with the services your office has provided.” – R.W.

“Exceptional Legal Services” – A.S.

“Your firm, Tully Rinckey, has provided and continues to provide me with prompt, keen, exceptional legal services. After the initial consult, I felt relieved that I had the representation from Tully Rinckey... I have found a new found hope with Tully Rinckey...” – A.S.

“Absolute Best” – R.H.

“My attorney was the absolute best I could ever have hoped for. A pure professional in every sense of the word. She was very mindful of my financial expenditure and still was able to represent me very well in my court case.” – R.H.

“Outstanding Service” – A.R.

“Outstanding service, true professional.” – A.R.

“Top Notch” – V.W.

“My attorney was top notch. Very pleasant and helpful.” – V.W.

“Very Thankful” – C.P.

“Very thankful for the help and guidance I received from your law firm. Because of your law firm I was able to return to work with all my back benefits.” – C.P.

“Ideal Choice” – D.H.

“My attorney knew exactly the approach to take and was the ideal choice. She was extremely responsive. She was clear, balanced, and open to our views and feelings. She made it clear she was there for us and ready to answer questions.” – D.H.

“Very Satisfied” – D.D.

“I was very satisfied with the services provided which were completed in a very timely and professional manner.” – D.D.

“Excellent” – B.M.

“Your firm provides excellent & free service to federal workers and NG/USAR members.” – B.M.