

Legal analysis paper

Law



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Legal Analysis Noncompetition agreement Non-competition agreement also known as “covenant not to compete” is an aspect in management that is employed to assist in controlling loss of valuable employees and also minimize trade secrets leakage or exploitation by the said former employees. Employees sign a non-competition agreement which require them not to perform any duty for a direct challenger for a given period of time after leaving a company (Garmaise, 2009). Moreover, they are required to protect and preserve former employer’s good will, trade secret and other relevant information. Recently, most employers have opted for the “covenant not to compete”, however strict measures have been placed in the rule of law which generally disapproves right to earn a living by former employee which is highly upheld in the courts. This paper generally intends to look into circumstances where court of law can enforce non-competition agreement and the relevant competing policy that are at stake. Also solution offered by the non-compete contract.

Circumstances when courts enforce non-competition contracts

Enough consideration to encourage a non-competition agreement comes in a variety of forms that is; payments to the employees, previous employment and under certain circumstances of continued employment and also intangibles like; knowledge, skills and professional status. Courts enforce non-competition agreement when; there is necessity to protect certain employer interest; agreement is in reasonable time and scope (period of six months to one year when agreement is to last and where good will is the only interest at stake and the employees customer contract is limited to a specific region); it is consistent with public interest (Garmaise, 2009). Courts uphold this agreement in two major protectable employer interests, an <https://assignbuster.com/legal-analysis-paper/>

employer's relationship with customers, clients and vendors (i. e. good will), trade secrets and other confidential business information.

Competition policy interests at stake and resolution by requirements

Conflicts of interest in non-competitive policy fall under two major stakes, that is; contractual limitations, where involved employee sign a clear written agreement promising to avoid doing certain things and agreeing to pay for damages in event of breach of agreement. Policy guidelines; where employer stipulates his/her expectation from employee (Estlund, 380). Protection of legitimate interest of the employer, limiting the undue hardship to the employee and protection -of public from any harm are key policy interest to be considered.

Protection of employer's interest is upheld through requirements by the employees not leak trade secrets and confidential information, not exploit the customers relations created while working for firm to empower there business or harm the employers investment. Undue hardship to the employee is minimized through ensuring good payments to the employee, geographical and time scope are also standardized to ensure that the right to earn a living is maintained (Estlund, 385). Protection of public from harm involves research on effects of enforcement on availability of goods or services in employer's company or corporates investments.

Conclusion

Non- compete agreements are different thus require a skilled personnel to review and analyze terms of agreement so as to enforce agreements. This kind of agreement jeopardizes a lot for both the employer and employee thus both parties should review the options offered before going into agreement. This is to prevent major losses that may be incurred in the

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courts.

Works Cited

Estlund, Cynthia L. " Between rights and contract: Arbitration agreements and non-compete covenants as a hybrid form of employment law." *University of Pennsylvania Law Review* (2006): 379-385.

Garmaise, Mark J. " Ties that truly bind: Noncompetition agreements, executive compensation, and firm investment." *Journal of Law, Economics, and Organization* (2009).