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Creative Business Solutions

Hold Onto Your Top Hats

Reviewing employment agreements with key employees for enforceability of noncompete and similar terms.

Problem

Especially in fast-moving high-tech industries, the resignation of key employees can cause serious problems, as they often take important know-how, customer lists, company data, and the like with them and can carry those things to a competitor. Some companies choose to enter into noncompete and similar agreements with important employees to prevent these consequences. However, such agreements are not always enforceable and may fail to accomplish the desired goal just at the time that they are needed.

Action

Have your employment agreements reviewed to see if they will stand up in court, long before any employee is out the door.

Results

Although there is no certainty that a court will enforce any particular agreement – they are often viewed as illegal restraints of trade – courts are more likely to enforce agreements that are well tailored to the potential harm that you may suffer as an employer and are limited in time and in scope. Reframing any agreements in this direction increases the chance that you will be protected in the potentially catastrophic circumstance of the departure of a key vice president, head of technology, or sales manager. It is true that on many occasions, the employer will choose not to sue in any case because of the significant litigation costs involved, but it is beneficial for the company to have the opportunity to file a lawsuit. From the other perspective, companies that are contemplating hiring a former employee of a competitor need guidance about any noncompete agreement that he or she may have signed.

Contact

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