

Is Your Most Valuable Asset Walking Out the Door? Can Non-Compete Agreements Help?

Halima Horton White

Often, employees are a company's most valuable assets. When such employees move to competitors, a huge concern may be whether those employees will take the company's other employees, customers, and intellectual property with them. Perhaps non-compete and non-solicitation agreements can help.

About seven years ago, Georgia revamped its non-compete laws. Prior to then, it was more difficult to enforce non-compete and non-solicitation agreements because courts could not "blue pencil" them. Thus, if even one provision of a non-compete agreement was unenforceable, the whole agreement was unenforceable. The idea was to discourage employers from drafting overly-broad agreements, given that employees may not realize certain provisions were unenforceable. Now, courts have the power to blue pencil agreements, revising unenforceable provisions to make them enforceable. But non-compete agreements are just one tool companies use to protect their ideas and customer base. Many of our clients also use non-solicitation agreements, confidentiality/non-disclosure agreements and contracts, governing who owns intellectual property created while an employee was with the company.

Our attorneys have experience working with computer analysts who can determine whether employees downloaded and took confidential information prior to leaving. Likewise, it pays to review whether employees emailed key information to themselves before leaving. (Neither of these is determinative because there may be legitimate reasons for employees to do so.) Such information can help build a case.



We also have experience sending cease and desist letters to competing companies and former employees prior to initiating a suit. We can advise on where to file a non-compete suit and can prosecute the action to its end.

In addition to lawsuits, companies try different approaches to ensuring that their hard-earned assets don't walk out the door. For example, some companies may pay severance in increments so that severance payments can cease if an employee breaches a non-solicitation agreement. There are other practical steps businesses can take, short of litigation, to lessen the impact of a departing employee. We are familiar with many best practices in that regard. Let us take a look at your policies and agreements to see whether they conform to existing laws and leverage your rights.