

Section	OURS	THEIRS 7/23/20	AGREEMENT/ ISSUES
<p>Section 5: definitions</p>	<p>1) Covenant not to compete clarification between an employer & employee;</p> <p>2) “Covenant not to compete” does not include: (a) a nonsolicitation agreement; (b) a confidentiality agreement or covenant; (c) a covenant or agreement prohibiting use or disclosure of trade secrets or inventions; (d) invention assignment agreements or covenants; (e) a covenant or agreement entered into by a person purchasing or selling the goodwill of a business or otherwise acquiring or disposing of an ownership interest; (f) garden leave clauses; (g) covenants not to compete made in connection with the cessation or separation from employment if the employee is expressly given seven business days to rescind acceptance; or (h) separation or settlement agreements by which the employee agrees not to reapply for employment to the same employer after termination of the employee.</p> <p>3) “Garden leave” is an agreement requiring advance notice of termination of employment, during which notice period the employee remains employed by the employer.</p> <p>4) “Nonsolicitation agreement” means a covenant or agreement between an employer and employee that prohibits (a) the solicitation or inducement of any employee of the employer to leave the employer, or (b) the solicitation, contact or transaction of business with the employer’s customers, prospective customers, vendors, or suppliers.</p>	<p>2) “Covenant not to compete” does not include (A) a covenant not to solicit, (B) a confidentiality agreement or covenant, (C) a covenant or agreement prohibiting use or disclosure of trade secrets or inventions, (D) invention assignment agreements or covenants, (E) a covenant or agreement entered into by a person purchasing or selling the goodwill of a business or otherwise acquiring or disposing of an ownership interest, or (F) clauses or an agreement between an employer and an employee requiring advance notice of termination of employment, during which notice period the employee remains employed by the employer and receives compensation.</p> <p>3) Their (F) above addresses</p> <p>4) “Covenant not to solicit” means an agreement between an employer and an employee (A) that restricts an employee from soliciting for employment the employer’s employees or (B) that restricts an employee from soliciting for services of any kind the employer’s clients, prospective clients, vendors,</p>	<p>1) yes</p> <p>2) yes an (a), (b), (c), (d) & (e) does not include our (f); our (g); and our (H) Theirs adds new (F)</p> <p>3) Close</p> <p>4) Theirs seems to work</p>

	5) definition of “low wage employee” deleted	prospective vendors, suppliers, prospective suppliers, or other business relationships. 5) SAME	5) Yes
Section 10: Prohibiting covenants for “specified” employees	<p>(a) No employer shall enter into a covenant not to compete with any employee of the employer whose annualized earnings do not exceed the salary basis requirement for classification as except from overtime compensation under the Fair Labor Standards Act, as reflected in 29 C.F.R. § 541.600.</p> <p>(b) A covenant not to compete entered into between an employer and an employee specified in Section 10(a) is presumptively illegal and void.</p>	<p>(a) No employer shall enter into a covenant not to compete or a covenant not to solicit with any employee of the employer whose annualized earnings do not exceed seventy-five thousand dollars per year. This dollar amount must be adjusted annually for inflation. Annually on September 30th the department of labor must adjust the dollar amounts specified in this section by calculating to the nearest cent using the consumer price index for urban wage earners and clerical workers, CPI-W, or a successor index, for the twelve months prior to each September 1st as calculated by the United States department of labor. The adjusted dollar amount calculated under this section takes effect on the following January 1st.</p> <p>(b) A covenant not to compete and a covenant not to solicit are void and illegal for any employee (i) who an employer terminated as the result of a layoff, or (ii) who an employer furloughed unless enforcement of the not to compete or the covenant not to solicit includes compensation equivalent to the employee’s base salary at the time of termination for the period of enforcement minus compensation earned through subsequent employment during the period of enforcement.</p>	<p>a) salary threshold: ours = FSLA overtime Theirs = \$75k + COLA</p> <p>b) Theirs adds issue of unemployment</p>
Section 15: Enforceability of a covenant not to compete	<p>(a) no changes</p> <p>(b) An employee has not received adequate consideration from an employer for a covenant not to compete unless (i) the employee worked for the employer for at least six (6) months from the date the employee signed the covenant not to compete or (ii) the employer provided the employee with some other fair and</p>	<p>(a) adds clarification of Section application to “employees not covered by Section”</p> <p>(b) An employee has not received adequate consideration from an employer for a covenant not to compete unless (i) the employee worked for the employer for at least two years from the date the employee signed the covenant not to compete, or (ii) the employer provided the employee with some other fair and reasonable consideration specifically in exchange for the covenant not to compete.</p>	<p>(a) yes</p> <p>(b) Time for enforceability of covenant not to compete Theirs adds that fair & reasonable consideration</p>

	<p>reasonable consideration in exchange for the covenant not to compete.</p> <p>(c) A covenant not to compete entered into between an employer and employee is illegal and void unless it (i) is no greater than is required for the protection of a legitimate business interest of the employer, (ii) does not impose undue hardship on the employee, and (iii) is not injurious to the public. Whether a legitimate business interest exists is based on the totality of the facts and circumstances of the individual case. Factors to be considered in this analysis include, but are not limited to: the employer's customer relationships; the employee's acquisition, use, or knowledge of confidential information through the employee's employment; and the time, place, and scope of activity restrictions.</p> <p>(d) A nonsolicitation agreement entered into between an employer and employee is legal and enforceable if it</p> <p>(i) is reasonably related to the protection of a legitimate business interest of the employer,</p> <p>(ii) does not impose undue hardship on the employee, and</p> <p>(iii) is not injurious to the public.</p> <p>Whether a nonsolicitation agreement is reasonably related to the protection of a legitimate business interest is based on the totality of the facts and circumstances of the individual case. Factors to be considered in this analysis include, but are not limited to: the employee's exposure to and participation in the</p>	<p>(c) For employees not covered by Section 10 in this Act, a covenant not to compete entered into between an employer and employee is illegal and void unless (i) it is no greater than is required for the protection of a legitimate business interest of the employer, (ii) it does not impose undue hardship on the employee, and (iii) it is not injurious to the public. Whether a legitimate business interest exists is based on the totality of the facts and circumstances of the individual case. Factors to be considered in this analysis include, but are not limited to, the near-permanence of customer relationships, the employee's acquisition, use, or knowledge of confidential information through the employee's employment, and time, place, and scope of activity restrictions.</p> <p>No (d) but addressed in their new section 20 Enforceability of a covenant not to solicit:</p> <p>Section 20. Enforceability of a covenant not to solicit.</p> <p>(a) For employees not covered by Section 10 in this Act, a covenant not to solicit entered into between an employer and employee is illegal and void unless</p> <p>(i) the employee receives adequate consideration, and</p> <p>(ii) it is ancillary to a valid employment relationship.</p> <p>(b) An employee has not received adequate consideration from an employer for a covenant not to solicit unless</p> <p>(i) the employee worked for the employer for at least two years from the date the employee signed the covenant not to solicit clients, or</p>	<p>must be "specifically" provided for covenant not to compete</p> <p>(c) Theirs adds "near performance" to customer relationships</p> <p>(d) Differences are similar to the Sec. 15 covenant not to compete</p> <p>Includes 2 year</p>
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	<p>employer's customer relationships or employees; support provided by the employer which contributed to the acquisition, maintenance, or development of the customer relationship, the employee's acquisition, use, or knowledge of confidential information relating to the employer's customers or employees; and the time, place and scope of activity restrictions.</p> <p>(e) An offer of employment, or of continued employment, is adequate consideration for a nonsolicitation agreement.</p>	<p>(ii) the employer provided the employee with some other fair and reasonable consideration specifically in exchange for the covenant not to solicit.</p> <p>(c) For employees not covered by Section 10 in this Act, a covenant not to solicit entered into between an employer and employee is illegal and void unless (i) it is no greater than is required for the protection of a legitimate business interest of the employer, (ii) it does not impose undue hardship on the employee, and (iii) it is not injurious to the public. Whether a legitimate business interest exists is based on the totality of the facts and circumstances of the individual case. Factors to be considered in this analysis include, but are not limited to, the near-permanence of customer relationships, the employee's acquisition, use, or knowledge of confidential information through the employee's employment, the employee's exposure to the employer's customer relationships or other employees, and time, place, and scope of activity restrictions.</p> <p>(e) not addressed</p>	<p>(e) No</p>
<p>Ensuring employees are informed about their obligations.</p>	<p>(a) A covenant not to compete entered into between an employer and employee is illegal and void unless the employer advises the employee in writing to consult with an attorney before entering into the covenant not to compete.</p>	<p>(a) A covenant not to compete entered into between an employer and employee is illegal and void unless the employer advises the employee in writing to consult with an attorney before entering into the covenant not to compete.</p> <p>(b) A covenant not to solicit entered into between an employer and employee is illegal and void unless</p>	<p>(a) Yes</p> <p>(b) Their (b) OK</p>

	<p>(b) A covenant not to compete entered into between an employer and employee is illegal and void unless</p> <p>(i) the employer provides the employee with a copy of the covenant not to compete at least 14 days before the commencement of the employee's employment or</p> <p>(ii) the employee provides the employee with at least 14 days to review the covenant not to compete.</p>	<p>the employer advises the employee in writing to consult with an attorney before entering into the covenant not to solicit.</p> <p>(c) A covenant not to compete entered into between an employer and employee is illegal and void unless</p> <p>(i) the employer provides the employee with a copy of the covenant not to compete at least fourteen days before the commencement of the employee's employment, or</p> <p>(ii) the employer provides the employee with at least fourteen days to review the covenant not to compete.</p> <p>(d) A covenant not to solicit entered into between an employer and employee is illegal and void unless (i) the employer provides the employee with a copy of the covenant not to solicit at least fourteen days before the commencement of the employee's employment, or (ii) the employer provides the employee with at least fourteen days to review the covenant not to solicit.</p>	<p>(b)/(c) Yes</p> <p>(d) their OK</p>
Remedies	In a civil action initiated by an employer involving a covenant not to compete, in addition to any remedies available under any agreement between an employer and an employee, a prevailing employee shall recover costs and all reasonable attorney's fees.	Same	Yes
Reformation	If a restriction in a covenant not to compete or nonsolicitation agreement is determined to be greater than required for the protection of a legitimate business interest of the employer, a court may, in its discretion, reform such restriction if the employer demonstrates that the scope of the original restriction represents a reasonable and good-faith effort to protect a legitimate business interest of the employer.	<p>(a) Extensive judicial reformation of a covenant not to compete or a covenant not to solicit entered into between an employer and an employee may be against the public policy of the State of Illinois.</p> <p>(b) In some circumstances, a court may, in its discretion, choose to reform a covenant not to compete or a covenant not to solicit entered into between an employer and an employee rather than hold such covenant unenforceable. When deciding whether such</p>	<p>(a) ???</p> <p>(b) Needs further discussion</p>

		<p>reformation is appropriate, a court should consider the fairness of restraints, and only make reformations if the employer demonstrates that the scope of the original restriction represents a reasonable and good-faith effort to protect a legitimate business interest of the employer.</p> <p>(c) If a court reforms a covenant not to compete or a covenant not to solicit entered into between an employer and an employee, the employer shall pay the employee's costs and reasonable attorneys' fees incurred prior to the date of such reformations, and the employer shall not recover any damages (including but not limited to actual damages or reasonable attorneys' fees) from the employee for any actions occurring prior to such reformations.</p>	(c) NO