Non-Compete Agreements in South Carolina – Balancing of Interests

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As the internet provides access to global markets to businesses and individuals alike, more and more employers are including non-compete agreements, a/k/a covenants not-to-compete or restrictive covenants, in employment contracts in an effort to protect their business interests or trade secrets. Whether you are an employer trying to protect your business interests, or an employee trying to make a living in a particular trade, understanding the laws surrounding non-compete agreements is crucial to avoiding potentially devastating outcomes.

Many employees in South Carolina will find it comforting that restrictions on competition are generally disfavored and are strictly construed against the employer. South Carolina courts balance the interests of employees and employers by recognizing the legitimate interest of a business in protecting its clientele and goodwill while identifying the importance of the right of a person to use his talents to earn a living. In balancing these interests, South Carolina courts have enforced restrictive covenants that are narrowly drawn to protect the legitimate interests of the employer. For example, in a recent decision, the South Carolina Supreme Court held that a 150-mile territorial restriction of a covenant not to compete is a reasonable and enforceable restriction. *Palmetto Mortuary Transp., Inc. v. Knight Sys., Inc.*, Op. No. 27833 (S.C. Sup. Ct. filed Aug. 29, 2018).

Such agreements are enforceable only if they are:

(1) supported by valuable consideration;
(2) necessary to protect the employer in some legitimate interest;
(3) not unduly harsh and oppressive in curtailing the employee's legitimate efforts to earn a livelihood;
(4) reasonably limited with respect to time and place; and
(5) otherwise reasonable from the standpoint of sound public policy.

Some jurisdictions follow the "blue-pencil" rule, which allows a court to modify or reform a covenant in its discretion by striking offending language from a contract. However, South Carolina is not a blue-pencil state. Instead, if a covenant not to compete is defective in one of the above-referenced areas, the covenant is defective in its entirety and cannot be saved, meaning that a South Carolina court will not make a new agreement for the parties of which they did not voluntarily enter. For example, if the territorial scope of the agreement is unreasonable and therefore unenforceable, the court will find the entire agreement unenforceable.

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Ultimately, the specific language of each agreement and the facts of each case will determine whether a South Carolina court will look favorably upon a non-compete agreement executed by both parties. Both employers and employees can more safely and efficiently navigate these issues and protect their own interests with the help of experienced employment law professionals.

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