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Richard D. Alaniz • Feb. 04, 2016

Donald Brown had worked for Charles T. Creech Inc. for 16 years when the company gave him a "conflicts of interest" agreement to sign if he wanted to keep his job. Part of the agreement included language that he would not work for a competing company for three years after leaving Creech.

Brown did leave Creech to join a competitor in 2008, and Creech sued him for

low," the WSJ noted.

Well-written employment agreements, which can include non-compete and non-solicitation agreements, can help companies and employees alike by clarifying expectations and decreasing the chances of disputes. They can also help companies remain competitive in an increasingly challenging marketplace. However, if employers are not careful with their employment agreements, they can end up in trouble with regulators or dragged into court by employees. In order to avoid problems, companies need to follow a few best practices to execute agreements that will help both employers and employees achieve their goals, and that will stand up to court challenges.

Elements of Employment Agreements

Companies can customize employee agreements in a number of different ways. They can have contracts for all employees at a certain job level, or they may only require contracts for employees with particular job duties. There are a number of common provisions in employment agreements:

- The scope of employment lays out the responsibilities, expectations, job location, and hours.
- Depending on a company's industry, invention assignments may make sense. With an invention assignment agreement, companies own any inventions or business ideas that employees come up with that relate to the company's business.
- Through non-disclosure agreements ("NDAs"), employees agree not to disclose any confidential information they learn while working for the company. This allows employees to acquire the information they need to do their jobs, while protecting the company's intellectual property and other key information.
- By signing a non-compete agreement, or a covenant not to compete, an employee agrees not to work for a direct competitor for a specific period of time after leaving

the company.

There are several things employers should consider when creating employment agreements.

Talk to the Experts

If employers are considering using employment agreements for the first time or have not reviewed their employment agreements in a while, it's a good idea to consult with HR professionals and in-house and outside counsel. They will have insights into current legal trends and best practices for particular industries, as well as making sure any employment agreement complies with applicable law.

Think about Incentives

Agreements should not be one sided and only benefit employers. There needs to be something in it for employees, too. In a 2014 case, an Illinois state appeals court ruled that employees needed to work for a company for at least two years in order to have an enforceable non-compete agreement, if there wasn't some other benefit like a bonus.

In the case of Prairie Rheumatology Associates, S.C. v. Maria Francis, D.O., Dr. Francis signed an employment agreement with PRA that included a two-year non-compete. She gave her resignation after working there for 15 months and resigned after 19 months. PRA sued her to enforce the noncompete. The court sided with her, finding she did not work there for 24 months and that she "received little or no additional benefit from PRA in exchange for her agreement not to compete."

Make Arbitration Agreements Fair

Many employment agreements include an arbitration clause, requiring employees to use alternative dispute resolution approaches instead of litigation. Arbitration tends to be cheaper, and the entire process can be much less stressful than going to court.

However, arbitration agreements that favor employers against employees can be

statement at the time charges were filed. "When an employer forces all complaints about employment discrimination into confidential arbitration, it shields itself from federal oversight of its employment practices. This practice violates the law, and the EEOC will take action to deter further use of these types of overly broad arbitration agreements." In September 2015, a federal judge denied Doherty's motion to dismiss the case.

Consider All State and Local Laws

Employers also need to keep state laws in mind. Some states have specific legislation governing employment agreements around trade secrets and non-compete agreements. For example, the California Business and Professions Code bans non-compete agreements, with a few exceptions. All aspects of an employment agreement should be thoroughly reviewed by a labor and employment attorney experienced with the particular state's laws.

Be Specific

The more specific language and less "legalese" an employment agreement contains, the less likely employees will be able to say they were confused by its terms. With specific language and targeted approaches, employers can also better ensure that employment agreements are written to protect legitimate business interests. That also means employment agreements will be more likely to stand up to legal challenges.

Companies should also consider whether they need employment agreements for each employee. For example, according to media reports, fast food franchiser Jimmy John's has been sued over its non-compete agreements, which requires employees not to work for a competitor, defined as any business that derives at least 10 percent of its sales from sandwiches and that is located within a prescribed radius of the Jimmy John's shop where the employee formerly worked. While the company's non-

compete agreement survived a legal challenge in U.S. District Court in Illinois in

become the victim of bad publicity.

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Richard D. Alaniz is senior partner at Alaniz Schraeder Linker Farris Mayes, L.L.P., a national labor and employment firm based in Houston. He has been at the forefront of labor and employment law for over thirty years, including stints with the U.S. Department of Labor and the National Labor Relations Board. Rick is a prolific writer on labor and employment law and conducts frequent seminars to client companies and trade associations across the country. Questions about this article, or requests to subscribe to receive Rick's monthly articles, can be addressed to Rick at (281) 833-2200 or ralaniz@alaniz-schraeder.com.