



NON-COMPETE VS. NON-SOLICITATION - EVERY BUSINESS PERSON SHOULD KNOW THE DIFFERENCE

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In industries where customer lists are essential, the employer will often seek to prevent an employee from “stealing” clients through the use of legal covenants, namely the non-competition (non-compete) and non-solicitation agreements.

The restrictiveness of non-compete and non-solicitation agreements determines whether the contract will be enforced in court. A non-compete agreement bars a former employee from competing against a former employer for a specified amount of time. If the employee, for example, had worked in a pharmaceutical company, a non-compete agreement would prevent him or her from working in the pharmaceutical industry. Oftentimes, these agreements are restricted to a specific geographic area.

The non-solicitation agreement is a less restrictive contract and is narrowly aimed at preventing an employee from soliciting his or her former employer’s clients. Unlike the non-compete agreement, the employee is allowed to immediately start work in the same industry and in the same geographic area.

Burke, Warren recently represented a company that was seeking to enforce a non-solicitation agreement against a former employee. The former employee left the company, started his own business and actively solicited clients from his former company. In court, Aaron Stanton and John Kobus, partners at Burke, Warren, showed that the former employee breached his non-solicitation agreement and obtained a preliminary injunction that effectively shut down the former employee’s new business.

Courts have generally viewed non-solicitation agreements more favorably as they do not impose limitations on an employee’s right to work. When balanced against the company’s legitimate interests – to preserve and to protect its client base – non-compete agreements have been found to greatly restrict an

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employee's ability to seek other employment. Non-solicitation agreements, on the other hand, are generally viewed by the courts as imposing reasonable conditions as the employee is free to continue working in his or her area of expertise.

If you have a question about which type of contract better fits your company's needs, feel free to contact Aaron Stanton at 312/840-7078 or astanton@burkelaw.com or John Kobus at 312/840-7093 or jkobus@burkelaw.com.