What You Need to Know Before Signing a Noncompete Agreement



You've been offered a new job, and your prospective employer wants you to sign a noncompete agreement. Should you? Many people don't really understand what these agreements entail or what questions they need to ask.

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A recent *New York Times* article points out that noncompete agreements, traditionally reserved for high-level executives, are popping up more frequently in surprising industries. Yoga instructors, hair stylists, and camp counselors are being asked to sign away their rights to move around in their industry.

"What started out as a scalpel for companies to protect their very valuable trade secrets and customer lists […] has turned into a bludgeon that exploits all types of workers," says Michele Grant, a lawyer who represents creatives, such as artists, authors, performers, and musicians, in Philadelphia.

For companies, the agreements are a way of retaining top talent and protecting intellectual property. People are valuable capital after all. "The people side of the business is one of a business's most important products," says Jennifer Bevan, a career coach. This was true for Sandra Contipelli, as she launched her denim company, Siwy Denim, in 2004. As a precautionary measure, she handed a five-year noncompete agreement to her designer. "This was to keep my designer and partner from starting her own line if she were to leave," she says. "Sort of a dissuasion. I wanted the noncompete to protect our creative intellectual property."

While noncompete clauses may be good for a business, they can have serious, long-lasting implications for one's career. Contipelli found out the hard way; she signed a noncompete alongside her partner.

"I didn't really think it would ever pertain to me because I didn't 'plan' at that time to ever be uninvolved in the company," she says. But when the company was purchased in 2009, Contipelli left and had to comply with the terms of the noncompete agreement. As a result, she was locked out of her industry. "I went from one unfulfilling business idea to another in the last five years; only to find myself still longing to be back in the business," she says.

Should You Sign the Agreement and Take the Job?

If a new job is asking you to sign a noncompete agreement, then what should you do? “The smart answer is: don’t take the job,” says Robert Ottinger, an employment attorney whose law firm is currently dealing with a noncompete lawsuit filed against several gym trainers. He likens noncompete agreements to economic slavery. “You’re trapped,” he says. “They can treat you poorly; they can pay you poorly. Why give someone a raise if you know they can’t leave? You’re really doing yourself in if you sign these things.”

This is especially true for young people looking to enter the workplace, warns Lindsey Pollak, a millennial workplace expert. “They know you’re in a desperate situation; the economy is bad, you don’t have a lot of experience, and they know you might agree to anything,” she says. “Part of me wants to tell millennials not to agree, just to make a point.”

But not everyone has the luxury of saying no. The good news is, much like with salaries and benefits, you can and should negotiate the specifics of a noncompete agreement.

“They should try to bargain—the worst they’ll hear is no, at which point they’ll have to decide whether it’s a deal breaker,” says Grant. “But I do advise all of my clients to challenge noncompetes.” The first step to negotiating is to give the agreement a good, long, scrutinizing look. Read all the fine print and make sure you understand it. You might even consider hiring a lawyer to go over the details.

The Questions You Need to Ask Before Signing

Noncompete law varies, but here are several items to pay attention to in your contract:

Where Does the Noncompete Apply?

Is the noncompete regional? Within a 10-mile radius, or just a few blocks? Does it cover the entire country? The larger the radius, the more you might want to renegotiate.

To Which Companies Does It Apply?

“Ask them to be really specific as to what companies you are prohibited to work for,” says Bevan. As Contipelli found out, not specifying can mean industry exile.

For How Long Does It Last?

“To me, anything longer than a year seems long,” says Bevan. “In terms of a job market today, people are transitioning, and the market is fluid. So if you’re limiting your ability to be mobile for more than a year, it feels very restrictive.”

Marjorie Miller, who does executive search and talent acquisition for startups, says she never signs a noncompete agreement that lasts for longer than six months. Companies would be wise to keep it short. The shorter the duration, the more likely a court is to consider the noncompete reasonable and enforceable. Ottinger says he’s never seen a court enforce anything that lasts longer than three years.

If you can’t negotiate the time frame, another option is requesting the company pay you for the time you’re not working. “If you’re going to prevent me from working somewhere, then pay me for it,” says Ottinger.

Under What Circumstances?

Sometimes you can negotiate the noncompete agreement based on the terms of your departure. Are you leaving the company voluntarily? Or are you being fired?

“Get them to be specific in the clause,” Bevan says. “I think that’s important because if you’re fired, not only are you out of a job, they’re also restricting where you can go work. How is that gonna help you?”

Watch Out for Lawyer Fees If You Breach the Contract

“A lot of these contracts say employees have to pay the legal fees of the company,” Ottinger says. “That’s the thing that really gets people.” This goes back to the first step: read the fine print. All of it.

How your company approaches these negotiations may be an indication of how they’ll treat you throughout your employment. “You can gauge a lot about whether or not this opportunity is worth negotiating or walking away,” says Bevan.

If you’re desperate for a job, sometimes you just have to take what you can get. “It always goes back to the individual—how much do they need this job?” Bevan says. “Is this*the* job? The dream job they’re gonna do anything for just to build the resume? Then that person needs to be a bit flexible.”

Confusingly, some noncompete agreements are put in place, and then never enforced. Miller, who recently worked for a New York digital media startup that uses noncompetes, says the documents “went in the drawer and were never looked at again.”

But you might not want to tempt fate. While Contipelli waited out her five-year noncompete, her partner didn’t, and has since been sued by the company that purchased Siwy Denim. Contipelli warns: “I would advise someone to think very carefully before entering into a noncompete.”

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Jessica Hullinger is a freelance journalist who covers innovation, tech, and science. Before deciding to go freelance full-time, Jessica served as Assistant News Editor for Fast Company, where she handled news items and social media outreach. Jessica has a soft spot for her home state of Indiana, an undying love for public radio, and an inexplicable obsession with archaeology.