

When Employees Compete With Employers: How To Protect Your Business



Employers trust employees with vital information related to clients, projects, plans, and other confidential business interests. Employee misuse of this information, both during the employment relationship and after it ends, can undermine the employer's competitive position.

Fortunately, the law provides employers with ways to prevent this from happening, and to protect themselves when it does.

Some of the protection is found in the common law, which applies even when the employee has not signed an employment agreement and no longer works for the employer.

However, the common law protections that are not supported with written agreement terms are somewhat narrow. These safeguards provide only limited protection from confidential information misuse, and they only prevent certain, key employees from soliciting the employer's clients and employees for a limited time after the employment relationship ends.¹

Beyond the common law, employers can take proactive steps to protect against former employees who use the employer's confidential information against the employer's interests.

In particular, employers can include restrictive covenants and confidential information use terms in employment agreements. These terms can limit an employee's ability to compete against the employer after the employment relationship ends.

A recent Alberta court decision reminds us that restrictive covenants must be carefully crafted and executed to ensure they are enforceable.²

When assessing the enforceability of restrictive covenant terms in an employment context, courts start with the view that the terms are unenforceable unless the employer can show the agreement is needed, and its terms are reasonable (i.e. no broader than necessary) to protect the employer's legitimate interest in curtailing unfair competition.

With businesses and the case law constantly evolving, it is important for employers to, both, draft restrictive covenant terms carefully, and regularly review existing restrictive covenant agreements and templates to ensure they are current and enforceable.

Neuman Thompson knows and understands the most recent case law principles to apply to increase the likelihood that contractual limits placed on employees are enforceable. Please contact us if you have any questions, or if we can otherwise assist you to protect you from employees who may damage your legitimate business interests during the employment relationship and after it ends.

Footnotes

1 1731271 *Alberta Inc. (c.o.b. Imperial Printing) v Reimer*, 2024 ABKB 446

2 *SHAC Solutions Inc. v Guenther*, 2024 ABKB 145

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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