



SHOULD I SIGN A NON-COMPETITION AGREEMENT?

Typically reserved for other industries, non-competition agreements are appearing in education



If you work in the education sector, odds are you have never been asked to sign a non-competition agreement. Notice I said "never been asked"? That is important because no one ever has to sign one, but then no one has to hire you either.

Chances are you may have seen one in another industry or have a friend who signed one. These non-competition agreements are legal documents drafted by top law firms for their clients. Unlike a nondisclosure agreement, which prohibits the disclosure or use of a former employer's confidential information, including trade secrets, the covenant not to compete prohibits employment with a competitor for a specified period of time and within a particular geographical area.

Employers can only obtain a covenant not to compete from an employee at the beginning of the employment period. Agreements that are signed after employment begins are generally not binding.

The debate over the enforceability of these agreements varies greatly, and both sides have a legitimate argument. In a country that generally believes its citizens have a "right to work," these clauses challenge the fabric of our freedom. Is America the land of opportunity provided you don't leave your employer, even if you can improve your career and livelihood by doing so? In turn, sometimes the most valuable assets businesses possess are its trade secrets.

Non-competition agreements can be vital tools for sophisticated businesses to protect confidential information and a competitive position. In today's business environment, the lack of enforceable agreements can result in the loss of valuable trade secrets and employees to direct competitors.

I am aware of three school groups nationwide that have non-competition agreements and enforce them. But is there a place for them in education? In my opinion, yes and no.

Yes: It is reasonable for your potential employer to ask you to sign a nondisclosure or solicitation agreement. The philosophy here is if you leave your organization to join another school group, you shouldn't be able to share any trade secrets or technology, nor should you be able to

solicit your former employees. Either action could have an immediate impact on their ability to run the school.

In certain instances I do believe there is a place for non-competition agreements. These should be reserved for employees you are going to train from the ground up and offer a set of career skills they did not have prior to joining your organization. For example, I know of a school group that trains admissions and financial aid representatives that have no prior experience. Is it fair that they invest the time and resources to enable these hires only to have them take their new abilities elsewhere?

No: I don't believe there is a good argument for non-competition agreements if the employee has held a similar or like function prior. Let's be fair, if you hire a campus president and this individual was a successful campus president for another school group, then they came to you capable. Can we honestly prevent this person from continuing their career within any geographical boundary?

Now, there are some caveats to consider. I do think relocation packages should come with some strings attached. Most employers will require new hires to sign a one-year agreement. If the employee were to leave anytime during this period, they would owe the cost of their relocation on a pro-rated basis to their employer. It is not fair for a school group to spend a large amount of money to move someone only to have them leave with no return on investment.

So what should you do if interviewing with a school group and they ask you to sign a non-competition agreement? Consider that you essentially guarantee you will have to relocate or leave the education sector should things not work out with the new employer if there are mileage restrictions, i.e., "can't work for another school within 100 miles." And, don't get caught in the trap of thinking "these things don't hold up in court."

You are right, quite often they do not, but do you really have the time and money to defend your right to work? Remember, the school group you might join probably has millions of

Read the conclusion to this article online at www.careercollegecentral.com/blogs/think_before_signing.

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