

# Preface

Restrictions on postemployment activities designed to protect legitimate employer interests are relevant today more than ever.

In a service-driven economy, the ability of a business to protect its investment in human resources, customer relationships, and confidential business information is critical to ensuring continued economic viability. In this milieu, businesses increasingly rely upon postemployment covenants not to compete to protect these investments. The growth in the use of such covenants also represents a sound response to increased levels of employee mobility, the globalization of product markets, and rapid advances in technology.

Employees often have access to the proprietary information, trade secrets, and other confidential data of the employer. Certain employees frequently have key relationships with customers and obtain specialized training or technical knowledge, expertise, or skills on the job, often at substantial expense—in terms of both money and time—to the employer. Postemployment restrictions seek to protect employers' interests in such assets and investments by preventing former employees from entering into competitive employment and otherwise eroding the former employer's market share. Such restrictions safeguard interests not protected by trade secret, patent, and copyright statutes, and augment those protections by supplying contractual remedies to which an employer might not otherwise be entitled.

Enforceable covenants not to compete offer obvious benefits to employers: They help to safeguard valuable customer relationships and confidential business information. In addition, they provide an indirect benefit to employees as a class: Given the protections afforded by restrictive covenants, employers can be more confident that the valuable information they impart to their employees, and the crucial customer contacts they develop, will not later be used against them in a competitive endeavor. Employees trusted with such information and contacts are better able to perform their jobs and, in that state, they maintain the viability of the employer and the employer's need for their services. When viewed in this light, even prospective employers

can be seen to benefit from the enforcement of reasonable noncompete agreements against prospective employees: Such restrictions help to guarantee a stable business environment and a level playing field—to the extent such firms' own former employees are also competitively restricted. This book is a valuable aid to attorneys for all three classes—employers, employees, and prospective employers of individuals bound by covenants not to compete—because it charts the limits of enforceability of restrictive covenants.

This treatise is designed to satisfy attorneys' needs in both the drafting and the counseling context. As a drafting tool, it provides detailed guidance on—and examples of—the statutory and common law limits of covenant enforceability, issues of consideration, and judicial modification of overbroad covenants. It is designed to answer a multitude specific questions regarding covenant enforceability in each jurisdiction. Employing a question-and-answer format and including occupation-searchable indexes, it provides a quick assessment of the law in each jurisdiction and, thus, a source of immediate answers to client questions in the counselling context. By using this book, both corporate counsel and private practitioners can answer clients' questions within minutes, and at a fraction of the cost that otherwise might have been incurred.

This volume completely updates this title through the end of 2010, alerting counsel to—and explaining the effects of—the many significant statutory and case law developments that affect covenant enforceability.

The table of cases and the six indexes help the researcher to determine which occupations, professions, industries, and transactions have been addressed by the covenant case law of each jurisdiction. These resources enable practitioners and drafters alike to quickly and accurately determine the status of the law on any of an ever-expanding number of critical issues governing the enforceability of postemployment covenants not to compete in the occupation of particular concern to them.

A work of this scope is necessarily the fruit of joint efforts by many talented individuals. While many of those who contributed to this title are mentioned elsewhere in the book, particular mention must be made of a few individuals whose extraordinary efforts have assured a thorough, timely, and greatly expanded treatment of the law of covenants not to compete.

Altaf U. Khan served both as Senior Production Editor and as Master Typesetter for this title. Because of his generosity in shar-

ing his technical expertise, and because of his untiring cooperation, it has been possible to make this volume available at the earliest possible moment.

Timothy J. Darby, an attorney specializing in labor and employment law, also went far beyond the call of duty as BNA Books' Director of Acquisitions, becoming a valued advisor on many aspects of this title. His enthusiasm and creativity are constant sources of inspiration to all who know him.

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