



ROBINSON & COLE LLP

Labor, Employment & Benefits



Enforcing Noncompetition Agreements in Massachusetts: A Q&A for Employers

Noncompete agreements are designed to prevent employees from taking customer relationships and trade secrets to competitors. The agreements do not prevent competition, but are designed to prevent unfair competition. Without these agreements, employees could go to a competitor or start a competing business by trading on the knowledge and relationships created while working with the former employer.

ARE NONCOMPETITION AGREEMENTS ENFORCEABLE IN MASSACHUSETTS?

Yes. Massachusetts courts will enforce them if they are necessary to protect legitimate business interests.

WHAT ARE "LEGITIMATE BUSINESS INTERESTS?"

Protecting confidential business information and goodwill. Agreements that prevent the unauthorized use or disclosure of the former employer's confidential business information or trade secrets are enforceable, as are those that protect the former employer's goodwill (see definition below).

WHAT QUALIFIES AS "CONFIDENTIAL BUSINESS INFORMATION?"

Anything that is valuable, secret and protected. Massachusetts law prohibits the unauthorized use or disclosure of confidential business information, also called "trade secrets." Typically, this is commercially valuable information that is not generally known outside of the company and that the company has taken reasonable measures to protect.

DO CUSTOMER LISTS QUALIFY AS CONFIDENTIAL BUSINESS INFORMATION?

In most instances, yes. Massachusetts courts will most likely treat them as confidential if the lists are not known outside of the company, the data cannot be easily assembled from publicly available sources, and the company has taken reasonable measures to protect them.

WHAT QUALIFIES AS "GOODWILL?"

Intangible business attributes, including reputation. Goodwill encompasses a variety of intangibles including reputation or position in the eyes of customers and potential customers.

ARE ALL NONCOMPETITION AGREEMENTS ENFORCEABLE IN MASSACHUSETTS?

No. Massachusetts courts will only enforce agreements that protect legitimate business interests. If they seek only to protect the former employer from ordinary competition, but do not protect trade secrets or goodwill, they are unenforceable. Also, agreements that try to prohibit former employees from utilizing general and ordinary skills are not enforceable. In Massachusetts, a noncompetition agreement must be reasonable and supported by consideration (see definition below).

WHAT IS A REASONABLE NONCOMPETITION AGREEMENT?

Scope and duration are necessary to protect interests. The geographic scope (e.g., whether the former employee is prohibited from working in a competitive position in Massachusetts, the United States, or worldwide) and the duration of the ban on working for a competitor must be necessary to protect the employer's confidential business information or goodwill. Massachusetts courts often reform such agreements by narrowing these parameters.

WHAT CONSIDERATION IS REQUIRED?

Continuing employment is sufficient. Courts will enforce noncompetition agreements only if the employee was provided with something of value in exchange for the promise not to compete against the employer. In Massachusetts, continuing employment generally qualifies as consideration, but not all Massachusetts courts are in agreement on this point.

IS A NEW NONCOMPETITION AGREEMENT REQUIRED WHEN AN EMPLOYEE CHANGES JOBS WITHIN THE COMPANY?

In some circumstances, yes. Massachusetts courts have refused to enforce companies' noncompetition agreements with employees who were later promoted or reassigned or who underwent a significant change in duties and compensation.

HOW DO MASSACHUSETTS COURTS ENFORCE NONCOMPETITION AGREEMENTS?

Preliminary and permanent injunctions. If the former employer sues, Massachusetts courts can keep an employee from working for a competitor or limit the work that the employee can do for the new employer (e.g., preclude a sales person from soliciting customers he or she solicited on behalf of the former employer). Whether the court will prohibit the employee from working for a competitor altogether or simply limit the services provided depends on what the court determines is necessary protection. Preliminary injunctions remain in effect only during the course of a lawsuit. Courts issue permanent injunctions at their conclusion.

IS IT UNLAWFUL TO KNOWINGLY EMPLOY SOMEONE WITH A NONCOMPETITION AGREEMENT?

Most likely. In Massachusetts, a company that knowingly employs an individual who has an enforceable noncompetition agreement may be subject to liability for interfering with the contractual relationship between that individual and his or her former employer. If an employee uses or discloses confidential business information in the new position, the new employer also may be liable for trade secret misappropriation. At a minimum, employing an individual with a noncompetition agreement may result in costly and disruptive litigation.

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