THE NUTS AND BOLTS OF NON-COMPETITION AGREEMENTS

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As you may be aware, one of the many great benefits of your membership with the Michigan Veterinary Medical Association is a free telephone consultation with the law firm of White, Schneider, Young & Chiodini, P.C. One of the most asked about topics is non-competition agreements and their enforceability. This article will discuss the most common issues related to non-compete agreements.

Michigan law provides that an employer may obtain from an employee an agreement which protects an employer's reasonable competitive business interests and expressly prohibits an employee from engaging in employment or a line of business after termination of employment if the agreement is reasonable as to its duration, geographical area, and the type of employment or line of business. (MCL 445.774a, part of the Michigan Anti-trust Reform Act.)

To the extent a non-compete agreement is found to be unreasonable in any respect, a court may limit the agreement to render it reasonable in light of the circumstances in which it was made and specifically enforce the agreement as limited.

Reasonable competitive business interests include those related to confidential and proprietary formulas, other information and trade secrets, client relationships, client information, pricing, marketing plans, cost factors, goodwill, or any other information that provides the employer with a competitive advantage because it is not commonly known outside the employer's workforce.

As mentioned, to be enforceable, a non-compete agreement must be reasonable as to (1) its duration, (2) its geographical scope, and (3) the type of employment or line of business sought to be limited. These are the three main issues when dealing with the enforceability of non-compete agreements.

DURATION

As to duration, courts have upheld time periods as short as six months and as long as five years. What is deemed to be a "reasonable duration" by the courts will vary depending on the industry and the type of work the employee performs. This determination is highly fact-specific and will depend on the factors involved in each case. As a general rule of thumb, a covenant not to compete for one year has usually been found to be reasonable.
GEOGRAPHIC AREA

The reasonableness of the geographic scope of an agreement not to compete depends on the nature and scope of the employer's business and the nature of the employee's duties and responsibilities. For example, if an employer is involved in a highly competitive business nationwide, a nationwide geographic scope is reasonable. However, such geographic limitations must be tailored so that the scope of the agreement is no greater than is reasonably necessary to protect the employer's legitimate business interests. Usually, the result is a specific and limited geographic area (e.g., "within a 15-mile radius from Grand Rapids" or "Wayne County").

TYPE OF EMPLOYMENT/LINE OF BUSINESS

A non-compete agreement is more likely to be enforceable when it includes a reasonable description of the type of work (e.g., veterinary medicine) and the employer's line or type of business (e.g., small animal clinic). If it is too general of a description (e.g., "may not practice veterinary medicine of any kind on any type of animal"), an employee may argue that he or she will be unable to work doing anything within his or her profession and industry. This argument has been successful with the courts in persuading them to exercise their discretion under the law by either refusing to enforce the non-compete agreement or by modifying it.

ENFORCEMENT OF NON-COMPETE AGREEMENTS

Injunctive relief is the most common remedy sought for breach of a non-compete agreement. Employers petition the court to enforce the agreement and to force the employee to comply with its terms. In some cases, the employer may seek damages rather than injunctive relief. Such damages usually take the form of lost profits and generally are only available if they can be calculated with a reasonable degree of certainty.

CONCLUSION

Non-compete agreements are a useful way for an employer to protect its competitive business interests. However, overreaching and overbroad provisions in such agreements will be subject to nullification or modification by the courts. As such, it is highly recommended that non-compete agreements be drafted and customized for each particular employee and in such a way that satisfies the statutory provisions outlined above.

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