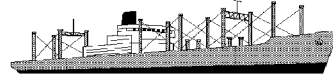




Rollin' On



An Electronic and Facsimile Newsletter for the Transportation Industry

Volume XIV, Issue 8

Copyright © 2008

August 2008

Noncompetition Agreements, Employment & Workplace, & Old School/New School

Noncompetition agreements: I'm outta here.

Last year's legislature made dramatic changes to Oregon's laws regarding noncompetition agreements. A huge percentage of the labor force is now protected in that noncompetition agreements are no longer enforceable against them.

As a side note, a couple of years ago (before the new law) my then-16 year old daughter casually mentioned at dinner one evening that her employer, a juice making outfit, required all employees, including her, to sign noncompetes which included a six month provision. Seems that they didn't want to train people, only to have them go to the competition. Other than being a minor and having her sign it sometime after she went to work and without giving her a raise or a bonus and keeping her at minimum wage or telling her that it was a legal document and that oh by the way maybe she should show it to a lawyer or giving her a copy, the agreement, which I never did see, might have been OK.

Anyway, there are new requirements for noncompetes:

1. Must be given to the employee at least two weeks before work starts, or for a continuing employee, at a bona fide advancement e.g. raise.
2. Only good for exempt employees, i.e. administrative, executive or professional.
3. Employer must have protectible interest, e.g. trade secrets.
4. Make a minimum of approximately 65K per year.
5. Two year maximum term.

These changes dramatically change the landscape for both employers and

LARRY R. DAVIDSON
Attorney at Law
 1850 Benj. Franklin Plaza
 One SW Columbia St.
 Portland, Oregon 97258
 (503) 229-0199
 Fax (503) 229-1856
 E-Mail: larry@rollin-on.com
www.rollin-on.com

employees. Before, an employer could hand a noncompete before work started on the employee's first day. That put the employee in a tough spot since the employee usually needed the work, and may have turned down other employment in reliance on taking the current job. Also, all employees were fair game, at least in theory. Those days are behind us.

There are some exceptions from the new law, which does not apply to:

1. Agreements made outside of an employment relationship, e.g. owner operators leased with carriers.
2. Bonus restriction agreements (definition too long to reprint here).
3. Agreements not to solicit employees.
4. Agreements not to solicit or transact business with customers.

The law applies to agreements entered into after January 1, 2008.

The new law does not restrict the employer's right to protect trade secrets or other proprietary information by injunction, which is a court order prohibiting a person from doing something. (Contrast that with an injunction requiring something to be done, which is easier said than done.)

As was the case under the prior law, it will still be difficult under the new law to prove damages since they are difficult to quantify. As an employer, your best remedy is to obtain an injunction against the now departed employee, prohibiting that person from obtaining employment in violation of the noncompete.

Once you get to court, you will find that judges don't much like

noncompetition agreements. Yes, the agreements are enforceable, but the employer has to show complete compliance with all of the law's nuances.

With the new law, selection of employees who are expected to stay around for awhile, and who acquire knowledge while on the job, is more important than it used to be.

Employment & Workplace: Old school, new school

How times have changed. In his recent acceptance speech, Joe Biden recalled the advice of his mother, who was in attendance, about taking care of business. She told him that if ever got knocked down by a bigger guy, to get him and bloody his nose, so that he could walk down the street the next day. Very nontrendy stuff these days.

Contrast that old school advice with today's practices. A day care employee was recently chastised for putting a kid on a time-out chair due to bad behavior. She was told that that sort of discipline is not practiced anymore. We can reflect to what would have happened to us if, as youngsters, we misbehaved.

Nowadays you can sue your employer if your feelings are hurt due to the comments of a fellow employee. It can be harassment or hostile work environment or discrimination or some other such thing.

So if you are an employer, you better be careful about who you hire, who you retain and who you don't fire. And if you do fire, how you document your reasons and how you go about it. There are conflicting forces and you run a risk regardless of which road you may take.

That's it for now. Until next time, keep the cargo *rollin'*!

Short Bio

Admitted to the state bars of Oregon, Alaska, Florida and Massachusetts. Practicing law for over 30 years and emphasizing transportation law, business law and related litigation

The Obligatory Disclaimer

This newsletter is for informational purposes, does not provide legal advice and does not create an attorney-client relationship