

# NON-COMPETE AND NON-DISCLOSURE AGREEMENTS

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# The Basics of Non-Compete Agreements

These Agreements are Governed by Michigan Statute MCL 445.774a, the Michigan Antitrust Reform Act (MARA). They prevent an employee from competing, directly or indirectly, with their former employer under certain circumstances.



# The Basics of Non-Compete Agreements

Must Protect an “Employers Reasonable Competitive Business Interest” (such as customer lists, goodwill, pricing information, profit margins, other trade secrets – but not general knowledge or expertise earned on the job).



# The Basics of Non-Compete Agreements

Must Be Reasonable as to Duration, Geographical Area and Type of Employment or Line of Business.  
This is very fact specific.



# The Basics of Non-Compete Agreements

Courts May “Blue-line” the Agreement to Make It Comport With the Court’s View of These Requirements. They like to allow an employee to make a living after they leave, particularly if they have been terminated.



# The Basics of Non-Compete Agreements

Should Employers Bother With Them? YES! It is like an insurance policy. It never hurts to have it but sure can be harmful if you do not (“Best to Have a Gun and Not Need It, Than to Need a Gun and Not Have One”).



## Non-Disclosure Agreements

A Non-Disclosure Agreement is an agreement in which an employee agrees to keep the employer's "confidential" or "trade secret" information private and not disclose or use it outside of his employment.

## Non-Disclosure Agreements

The key to enforceability of these agreements is the employer's treatment and protection of its information. If you do not treat the information as confidential, then neither will a court.



# Non-Disclosure Agreements

If an employer wants protection for its information, an Employer should:

- Restrict access to “confidential” information to only necessary employees with passwords and other types of security
- Mark information as “confidential and proprietary”
- Code data so it is encrypted and cannot be copied with simple word processing commands.



# New Hire – Old Employment Agreement



## NOW WHAT?

# Please Welcome Our New Employee...



# Wait – There's an Employment Agreement. . . !



## What to Do?

Each situation is unique and needs be to analyzed on case by case basis.

One key question is: what company is the former employer and how are they likely to respond to the hire?

# Some Former Employers React Very Negatively and Just Want to Bite You



# We Know How to Deal with Them



## The G-R-A-P-E Approach

**G** – Get the Agreement ASAP

**R** – Review the Agreement

**A** – Affirm the Agreement with Employee

**P** – Prevent Data Migration

**E** – Explore Negotiations





# My Former VP is Now My Competitor's CEO!



# Should I Sue the New Employer? The S-N-A-P Approach

- S** – Study your employment agreement.
- N** – Notify the new employer of the employment agreement.
- A** – Acquire as much information as possible about employee's activities.
- P** – Prevent the employee from relying upon the new employer's "deep pockets"

# Thank You!

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