Greenbaum Law Firm, P.A.

5 CLAUSES YOU MUST REVIEW
BEFORE SIGNING AN EMPLOYMENT CONTRACT
(PART I)

Being asked to sign an employment agreement can be intimidating.

Before signing an employment agreement (or a letter of employment, or any other document that binds you in any way to an employer) you should make sure to review the document for those provisions that might cause you future problems.

Do not take an employment agreement lightly.

It is extremely important to remember that the employer (and the Human Resources personnel who works for the employer) are not on your side when they hand you an employment agreement to sign.

The clauses contained in that agreement were drafted on behalf of the employer and are written to benefit the employer, not you.

Here are 5 clauses that you must review before signing an employment contract.

1. Covenant Not to Compete

This clause exists to prevent you from using the knowledge you have (or will learn, if you have not yet started work) while working at the employer and using it to your benefit (and to the employer's disadvantage) once you leave the company.

It is a promise made by you not to compete in the same type of business as your (former) employer within a certain geographic area for a certain period of time. For example, this would prevent a tax accountant from leaving an accounting firm to work for a competing firm around the corner for a one-year period from the time he/she leaves his/her job.

Courts will enforce a covenant not to compete if the restrictions are reasonable.

What constitutes 'reasonable' is determined on a case-by-case basis.

A covenant not to compete may be considered reasonable if it:

- Is not too burdensome to protect an employer's legitimate protectable interests
- Does not impose undue hardship on the employee
- Does not cause injury to the public
- Is reasonable in:
    - duration (length of time)
    - subject matter (what it is actually against)
    - geographic scope (how large an area it encompasses)

At a minimum, the employer must have an interest that requires protection, such as a trade secret, confidential information or specialized training that the (former) employee would use against the employer to its disadvantage. In addition the restrictions must be reasonable in geographic scope, duration, and restricted activity.

Geographic Scope. Covenants not to compete often describe geographic scope as a radius from a particular location. For example, 5 miles from the employer's office.

Duration. The term of the covenant not to compete may only last for a reasonable period of time, most often, not longer than one to two years.

Restricted Activity. The covenant should be very specific as to the type of services that are being restricted. For example, a covenant not to compete that restricted the employee from working "at a desk job" would probably be too broad to enforce.

If possible, it is best to completely remove a covenant not to compete. If that is unrealistic, the scope of the restriction should be as limited as possible.

If you are thinking about taking a job that requires your signing an employment agreement, you should certainly have an attorney available to assist you before moving forward. Should you find yourself in this position, contact the Greenbaum Law Firm, P.A. to schedule a consultation today.

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5 CLAUSES YOU MUST REVIEW BEFORE SIGNING AN EMPLOYMENT CONTRACT (PART II)

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2. Non-Disclosure/Confidentiality Clause

A non-disclosure or confidentiality clause (sometimes referred to as a non-disclosure agreement or NDA) is an agreement, either as a clause in a contract, or an entirely separate document, where one or both parties promise that information communicated between the parties will be kept confidential and not released to third parties.

If both parties are required to keep the information secret, it is called a mutual non-disclosure. Otherwise, it is a unilateral non-disclosure.

Employers, especially those who deal with sensitive, proprietary information, will often require new hires to sign a non-disclosure. The employer considers the information being learned by the employee to be valuable (for example, trade secrets), and the dissemination of such information to others would harm the employer's business.

A non-disclosure may be used to protect any material that is not deemed to be in

the public domain. Any information already in the public domain, or known by the employee before it was revealed by the employer, would generally not be deemed protected and would not be subject to the non-disclosure.

In addition to privileged information, employers often desire to keep confidential any information that, if released, might negatively impact its business. This may have a very broad scope and, if not careful, one may find oneself inadvertently violating this clause due to its wide reach.

3. Non-Solicitation Clause

Non-Solicitation often refers both to soliciting or asking co-workers to leave the employer for a new employer (sometimes a company that you yourself are starting) as well as soliciting the employer's customers to follow you to your new job.

A specific time period is often associated with a non-solicitation clause. For example, an employer will require that employees cannot solicit for employment nor hire any employees away from the employer for a specific time period after the employee leaves the company, let's say one to two years.

Regarding the employer's customers, the employer might require that the employee not contact customers or suppliers of the employer with whom the employee had contact during his/her employment for a similar time period after leaving the job.

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5 CLAUSES YOU MUST REVIEW BEFORE SIGNING AN EMPLOYMENT CONTRACT (PART III)

Being asked to sign an employment agreement can be intimidating.

Before signing an employment agreement (or a letter of employment, or any other document that binds you in any way to an employer) make sure to carefully review the document. The clauses contained in that agreement were drafted on behalf of the employer and are written to benefit the employer, not you.

4. Intellectual Property Assignment

You may work for a company where your ideas, concepts and techniques result in the creation of intellectual property. The things you create at work may be subject to copyrights, patents, trademarks and other intellectual property rights. These rights are often valuable.

Because you are working on these matters as an agent of your employer, your employer will want to ensure that it, and not you, owns the rights to the items you create. In order to safeguard their ownership of such creative works, an employer will have the employee assign all rights to such intellectual property to the employer.

By doing so, any intellectual property that you conceive, develop, discover or create, either in whole or in part, during your employment, will belong to the company and not you.

Now, in many instances, this is fine. You are being paid by the employer for your time and work, so it makes sense that they, and not you, own the rights to whatever you create while ‘on the job.’ The problem, however, is what happens when you create something while employed that is not for the benefit of your employer.

We are said to be living in a ‘gig economy’ where many people, in addition to their main source of income (for example, a full-time job), are said to have ‘side hustles.’ Let’s say you are subject to an employment agreement and, in your spare time, you work on a side project.

Assuming this side project becomes successful, depending upon the specific provisions of your employment agreement and intellectual property assignments contained therein, you may have inadvertently assigned your rights to your side project to your boss.

This might certainly be the case if your employment agreement also contains a Non-Moonlighting Clause (see below). If you actually use down time during work to develop a side project, or if you use company property (for example, a company computer) for such project, it is likely that your employer will claim that your side project was actually for their benefit, and they might seek to enforce ownership over your side project due to the intellectual property assignment clause contained in your employment agreement.

If you are going to work on something 'on the side,' make certain that you do not do so during working hours or by using work equipment. In addition, if you are faced with signing an intellectual property assignment, you will want the scope of the documented to be as limited as possible.

5. Non-Moonlighting Clause

To make ends meet, many people find a side hustle or even a second job. This may be problematic to your full-time employer, who wants you to be fresh, alert and awake when working for them.

Although it is extremely difficult for employers to stop you from taking a second job (and it may not even be possible to police what you do during non-working hours), they can enforce rules regarding such second jobs.

Your employer may assert that if you want to remain in their employ, you must:

(a) inform them regarding any outside employment
(b) complete your assignments on-time and, if necessary, work overtime to do so
(c) not allow any second job to interfere with your ability to properly complete your full-time job
(d) not cause a conflict-of-interest with your full-time job

If such a clause exists in your employment agreement, it is important that you understand the expectations and ramifications in order not to interfere with your current employment.

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