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Non-Compete Agreements in Puerto Rico

Along with confidentiality agreements, covenants not to compete help companies protect their private information and limit unfair competition from employees who leave. If your company does business in Puerto Rico is important to understand that the courts in the Island disfavor non-compete clauses.

Article II sec. 16, of the Constitution of Puerto Rico recognizes the right of every worker to choose his occupation and freely resign. To protect this freedom of choice, courts have narrowly interpreted non-compete clauses and imposed strict requirements for their validity. When these are not met, the contract is deemed invalid and unenforceable.

In *Arthur Young & Co. v. Vega,* 137 D.P.R. 40 (1994), the Puerto Rico's Supreme Court was emphatic and explicit in outlining five requirements to create a valid non-competition clause in Puerto Rico. Agreements that do not comport with the court's requirements are against public policy and unenforceable. The requirements are:

1. The employer must have a legitimate interest in the non-compete agreement, that is, of not receiving the protection of a non-compete agreement, the business would be substantially affected. The magnitude of this interest is measured, in light of the position of the employee within the company.
2. The scope of the prohibition in the non-compete must correspond to the interest of the employer, as to object and place restriction term or affected customers. The purpose of the ban should be limited to activities similar to those conducted by the employer and need not be limited to specific functions used. The term non-compete should not exceed twelve months, understanding that any additional time is excessive and unnecessary to adequately protect the employer. The contract must specify the geographic boundaries or affected customers. As for the geographical area to which the restriction applies, it should be limited to the strictly necessary to prevent real competition between the employer and employee. When the non-competition concerns customers it should refer only to those who personally attended the employee for a reasonable period of time before giving up, and in doing so, or in a period immediately preceding the withdrawal, clients were still with the employer. These elements are evaluated taking into consideration the industry involved and the possible related public interest.
3. The employer must offer a consideration in exchange for the employee signing the non-competition covenant. This consideration may be, for example, obtaining a promotion, gaining additional benefits at work or enjoyment of substantial changes in employment conditions. Mere job tenure will not be admitted as a consideration of the non-competition agreement.
4. Non-compete agreements, as with any contract, must have the essential elements for validity: consent, object and cause or consideration. Article 1213 of the Civil Code, 31 LPRA sec. 3391. However, in this type of contract the courts will be especially strict to ensure that the employee freely and voluntarily signed the non-compete agreement. Undue pressure or coercion by the employer will make it invalid and unenforceable.
5. Non-competition covenants must be in writing.