

Covenants Not To Compete – Is their time done?

Covenants not to compete are not generally favored by the courts and in Virginia, have been subject to wide interpretations from one court to another. Moreover, they are generally interpreted very narrowly. Recently, the Virginia legislature has further introduced a number of provisions and restrictions related to these employment agreements, making their utility in the insurance industry more and more problematic.

Effective July 1, 2026, for example, contractual non-compete provisions will be significantly restricted. A new covenant not to compete will be enforceable only if the employer either terminates the employee “for cause” or provides severance benefits or some “other monetary payment” disclosed in the covenant at the time the contract is signed.

A better approach to protecting an agency’s confidential information is to avoid non-competes entirely and, instead, to use a non-solicitation, non-disclosure, and/or confidentiality agreements.

Non-solicitation agreements in Virginia restrict former employees from poaching a company's clients or employees. To be enforceable, they must be narrowly tailored to protect the employer's legitimate business interests and not impose an undue hardship on the employee's ability to earn a living. These provisions prevent a former employee from actively reaching out to clients or prospective clients with whom they had material contact during their employment.

Agreements that protect corporate records and sensitive company information are most commonly called non-disclosure agreements. These contracts establish a confidential relationship and oblige the receiving party to maintain the secrecy of proprietary data, financial documents, trade secrets, and employee information.

Moreover, in the insurance industry, the Bureau of Insurance requires data protection agreements, and agencies/companies must have these agreements with third-party service providers and others to ensure all exchanged records and personal data are kept strictly confidential.

In short, the agency wants to protect the information and data essential to agency operations. It’s best to concentrate on these areas with drafting agreements and corporate policies.

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