

COMPETITION IS HEALTHY, AS LONG AS YOU PLAY BY THE (NEW) RULES

There is a natural tension between a departing employee's wish to begin a new career, and her ex-employer's desire not to have her suddenly work for a competitor. This tension becomes more pronounced when that competition is at least partially based upon trade secrets or other confidential information learned by the individual while she was employed at the former business.

While some states (e.g., California) ban non-competition agreements altogether, Oregon has traditionally taken a middle ground: non-competition agreements have not been enforceable unless they are made at the beginning of an individual's employment, or at the time the employee receives a bona fide advancement.

However, the 2007 Oregon legislature has made some major changes to the non-competition legal landscape. As of January 1, 2008, such agreements will not be enforceable unless:

- The employee is exempt from minimum wage and overtime as a "white collar" employee (i.e., he or she fits into either the executive, administrative or professional exemption),
- At termination, the employee's annual salary and commissions exceed the median family income for a family of four as determined by the U.S. Census Bureau (\$64,832 as of August 30, 2007),
- The employer has what is called a "protectable" interest. This means that the employee will have access to trade secrets or competitively sensitive confidential business or professional information - such as product development plans, product launch plans, marketing strategy or sales plans,
- The agreement is entered into at the beginning of employment (or bona fide advancement), and the employer has provided a written notice to the employee - at least two weeks before employment begins - that a non-competition agreement will be required, and
- The agreement is not effective for longer than two years from the date of the employee's termination.

Note: Special rules apply to "on-air talents" in the broadcast industry.

For more information about this and other important issues regarding Oregon employers, please visit our website at www.Oregon.gov/boli/ta. You can also call us at 971-673-0824.