

Employees Must Receive Compensation

For Signing Non-Competes



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Most employers ask some or all of their employees to sign non-compete agreements to prevent them from leveraging the knowledge and connections gained during the course of their employment to get a job with a competitor.

Although many employers may not realize it, Pennsylvania law dictates that employers always must offer employees some type of valuable compensation in exchange for signing a non-compete agreement. Without compensation, the company will be unable to enforce the agreement in Pennsylvania courts.

It's a common misconception that employers can get around the compensation rule by making sure that the non-compete agreement says that both employee and employer "intend to be legally bound" by the document. The belief comes from Pennsylvania's Uniform Written Obligations Act (UWOA), which states that any contract is valid, even if no payment or other benefits have been exchanged, as long as the contract states that both parties intend to be legally bound by it.

But a recent ruling by the Pennsylvania Superior Court forcefully dispelled that misconception, making it clear that the rule to give employees compensation for signing non-compete agreements trumps the UWOA.

In the case, a company hired a salesman who had worked for it previously. Upon accepting employment, the company asked him to sign a non-compete agreement that restricted him from working for a competitor for two years after leaving the company. Later, the company asked the salesman to sign another agreement that further restricted him from working

for competitors in several states, including Pennsylvania. The salesman was given no extra compensation or consideration for signing the non-compete agreement.

When the salesman took a job with a competitor in Pennsylvania, his former employer threatened legal action against the new employer, which fired the salesman. The salesman then sued his former employer, claiming that his non-compete agreement was invalid because the company didn't compensate him for signing it. The company argued that despite the lack of compensation, the contract was legally binding under the UWOA.

The Pennsylvania Superior Court ruled in favor of the salesman, noting that non-compete agreements "have always been disfavored in Pennsylvania." The UWOA does not relieve employers of their obligation to compensate employees for signing non-compete agreements. For new employees, the job itself is acceptable compensation. But for existing employees, employers must offer some other benefit, such as a bonus or promotion. Courts do not consider "continued employment" to be acceptable compensation.

The ruling serves as a warning to all employers of the difficulty of enforcing non-compete agreements in Pennsylvania. Employers should review their non-compete agreements and administration policies to make sure that the agreements are enforceable in court.

For more information about non-compete agreements and other matters related to employment law, contact Beth Slagle at bas@muslaw.com or 412-456-2890.

Beth Slagle has practiced law for more than 20 years and focuses her practice on business disputes and employment law. Beth's work has earned her a spot in Best Lawyers in America since 2010, and she is the chair of the firm's Insurance Coverage Litigation Group.

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