



## Recent Developments in Colorado Regarding Non-Compete Agreements

Non-compete agreements in Colorado can be tricky. Generally, such agreements are void. But there are exceptions, such as for agreements concerning management personnel or trade secrets. Fortunately, the Colorado Supreme Court and Colorado Court of Appeals have recently provided some guidance that is very useful for Colorado employers.

### **Narrowly Tailored Non-Compete Agreements Incorporated into Nondisclosure Agreements**

First, any non-compete agreement should be narrowly tailored and incorporated into a nondisclosure agreement. When deciding whether to enforce a non-compete agreement, a court will look at the necessity and reasonableness of the agreement.

One way to show the necessity of a non-compete agreement is to tie it to the protection of confidential information, such as client information or trade secrets. Incorporating the non-compete agreement into a nondisclosure agreement concerning confidential information is a simple and clear way of demonstrating the necessity of the non-compete agreement.

A narrowly tailored non-compete agreement is more likely to be reasonable. Ways to tailor a non-compete agreement include limiting the geographic and temporal scope. For example, courts have found a non-compete agreement that expires one year after the employee has left the company is reasonable.

### **Continued At-Will Employment as Adequate Consideration**

Second, continued employment of at-will employees is adequate consideration for non-compete agreements with such employees. However, continued employment is not adequate consideration for employees who are obligated by their employment contract to continue working.

Courts are quite lenient in finding adequate consideration between two contracting parties but will look at the reasonableness of the situation. If the at-will employee is terminated shortly after signing a non-compete agreement, such a limited term of continued employment is most likely unreasonable and therefore not adequate consideration.

### **Conclusion**

Colorado statutes, as interpreted by the courts, provide specific guidance for drafting and implementing enforceable non-compete agreements. Be specific when drafting a non-compete agreement; limit the geographic and temporal scope and tie it to a nondisclosure agreement. When entering into non-compete agreements with at-will employees, continuing their

employment for a reasonable amount of time constitutes adequate consideration. Clients and friends can contact us to draft and put into place non-compete agreements that will likely be enforced.

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Schuchat, Herzog & Brenman lawyers closely follow Colorado court decisions regarding non-compete agreements and are well versed in understanding how the relevant statutes operate.

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Our updates are general information that may not apply in all situations. Please contact us for specific legal advice based on particular situations rather than relying on any of our updates. We'd be happy to help.

**For more information, please contact:**

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