

Non-Competes and Protection Against Unfair Competition

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WORK.





Business information often is a company’s most significant asset, as investments in traditional assets such as plant and equipment have decreased. Business information includes technical know-how, client lists, the terms of favorable relationships with vendors, the “recipe” for how the business generates revenues and profits, information regarding employees, the company’s plans for the future, and a variety of other data a company would never willingly share with a competitor.

At the same time, employees and others easily can move information with the click of a mouse – emailing it outside the company or putting it on a thumbdrive or similar portable storage device. Many businesses are particularly vulnerable to attacks on their competitive position because they do not have procedures in place to address the ease of information transfer, which is especially important in an age of high employee turnover.

Jackson Lewis’ Non-Competes and Protection Against Unfair Competition Practice Group offers a multidisciplinary approach to help employers confront all forms of unfair competition, both through appropriate agreements and policies and in courts across the United States and beyond. No matter what the client’s particular situation, we bring to bear a wealth of knowledge, experience, and practical solutions that make business sense.

Our Commitment

The Non-Competes and Protection Against Unfair Competition Practice Group is committed to the firm’s mission for all its clients – the prevention of workplace problems before they occur. By advising clients with respect to preventive strategies that protect their interests in confidential information and customer goodwill, we help clients minimize the risk of unfair competition and maximize their ability to defend against the unlawful misappropriation of invaluable assets. We also work with employers to develop training and compliance programs that reduce their exposure to claims made by former employers against new hires.

When preventive efforts fail, we aggressively litigate claims, including those for breach of non-competition agreements, theft of trade secrets, breach of fiduciary duty, employee raiding, and unfair trade practices. Our attorneys have litigated such cases across the country, in forums ranging from state, federal, and bankruptcy courts to securities industry and American Arbitration Association tribunals. Many of our cases have been at the forefront of emerging legal trends ranging from the inevitable disclosure doctrine to the enforcement of non-competition agreements with a worldwide scope.

Trade Secret Protection Programs

The key to preventing unfair competition is an effective Trade Secret Protection Program that guards against the loss of confidential information, deters employees from unfairly competing, and enhances the employer’s ability to prevail in litigation. At Jackson Lewis, we have over 55 years of experience advising clients in all aspects of an effective Trade Secret Protection Program, including the following:

- *Drafting non-competition agreements, non-disclosure agreements, assignment of invention agreements, and similar documents.* With offices across the country, we understand how the law on such agreements varies from state to state, and we are ready to advise employers in all 50 states.

- *Preparing executive and individual employment agreements.* These agreements provide opportunities for employers to prevent or discourage unfair competition through the forfeiture of stock options, deferred compensation, or other rewards when employees violate the terms of restrictive covenants. As part of our multidisciplinary approach to workplace law issues, the Non-Competes and Protection Against Unfair Competition Practice Group works closely with the firm's Employee Benefits Practice Group to design such restrictions for incentive compensation plans and executive employment agreements.
- *Consulting on electronic information retention and security policies.* Often in partnership with professional security and investigative firms, we provide employers with practical advice on physical security, information security, and retention to protect trade secrets and other confidential business information.
- *Training employees on policies regarding confidential information, non-competes, and other protective measures.* Since its founding over 55 years ago, Jackson Lewis has promoted open employer-employee communications as an effective way to avoid workplace disputes. Communicating with employees regarding the employer's expectations about the protection of its trade secrets and other confidential business information, as well as its policies against the use of such information from other companies, reduces the risk of misunderstandings about the information the employer believes is entitled to protection. In addition, such communications increase the possibility that the employer will be able to protect its information in litigation, and reduce the risk of liability or damages in claims brought by other employers regarding alleged misuse of their information. To facilitate such communications, we work with employers to draft and implement appropriate handbook policies, training programs, exit interview procedures, and other measures all customized to the company's needs and culture.

Litigating Unfair Competition Claims

Unfair competition and trade secret litigation is not routine. Courts often conduct injunction hearings just days – and sometimes hours – after a lawsuit is filed, and this is often the only “trial” in the case. Attorneys who are able to investigate, brief legal issues, and present evidence under such unique circumstances often give their clients a considerable advantage at the injunction hearing. On the other hand, employers who lose at the initial injunction stage rarely get a second chance to present evidence regarding the enforceability or unenforceability of the agreement at issue.

Experience is critically important, and members of the Jackson Lewis Non-Competes and Protection Against Unfair Competition Practice Group have litigated all types of unfair competition claims in courts across the United States. With offices in major locations throughout the country, we can respond to injunction matters on minimal notice in state and federal courts with teams of experienced attorneys knowledgeable about local rules. This immediate availability frees up time for our attorneys to learn the employer's business, come to understand its technology, and communicate the danger facing the employer and the need for injunctive relief.

We also have extensive experience handling the complex computer forensics and e-discovery issues that arise in unfair competition litigation. We work closely with the firm's e-Discovery Group and preferred vendors to guide our clients through forensic examinations and propounding and responding to requests for production of electronically stored information.

In addition to injunction proceedings, we represent employers in other workplace unfair competition claims, including theft of trade secrets, employee raiding, breach of fiduciary duty, and violations of state unfair competition laws.

To learn more about our services, please visit us online at jacksonlewis.com.



About Jackson Lewis P.C.

With offices in major locations from coast to coast, Jackson Lewis provides creative and strategic solutions to employers in every aspect of workplace law. Recognized as the **2014 Law Firm of the Year** in the category of Litigation – Labor & Employment, and ranked in the First Tier nationally in the categories of Employment and Labor Law on behalf of Management in *U.S. News – Best Lawyers®* “Best Law Firms,” our firm has one of the most active employment litigation practices in the U.S.

All we do is work. Workplace law.

