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**Legal Basics of Restrictive Covenants in Pennsylvania**

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**Benefits of Restrictive Covenants**

- Important tool to prevent and deter current and former employees from damaging the employer through competitive activity
- Can be used to protect a company's customer goodwill and trade secrets
- Caution: Not favored in Pennsylvania

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**Types of Restrictive Covenants**

- Non-Competition Agreements
- Non-Solicitation Agreements
  - Customer
  - Employee/Non-raiding
- Confidentiality/Non-Disclosure Agreements
- Garden Leave Agreements
- Assignment of Property Rights

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**Enforcing Restrictive Covenants  
in Pennsylvania**

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**Requirements for an Enforceable  
Restrictive Covenant**

- Must be ancillary to the employment relationship;
- Must be supported by adequate consideration;
- Must be reasonably necessary to protect a legitimate interest of the employer; and
- Must be reasonably limited in duration and geographic scope.

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**Ancillary to Employment**

- Covenants made independently of a sale of business or contract of employment are void
- Covenants executed at the inception of employment are generally ancillary
- Whether a covenant is ancillary is closely intertwined with whether adequate consideration exists

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### Adequate Consideration

- Covenants executed at the inception of employment
- Covenants “auxiliary” to the taking of employment
- Covenants executed during the course of employment

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### Legally Protectable Interest

- Customer goodwill
- Specialized training or skills
- Trade secrets or confidential business information

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### Reasonableness Restrictions

- Time Duration
  - Governed by the interest to be protected
  - Often Industry specific
  - Sometimes depends on frequency of client contact

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### Reasonableness Restrictions

- Geographic Scope
  - Governed by the interest to be protected
  - May be enforceable without reference to spatial limitations
  - May be customer specific

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### Effect of Involuntary Termination

- Courts consider involuntary termination in determining the reasonableness of a covenant
- Termination of an employee by the employer may result in a court deciding it is unreasonable to enforce an otherwise enforceable restrictive covenant
- Factually specific inquiry and determination

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### “Blue Penciling”

- Pennsylvania is a “blue pencil” jurisdiction
  - PA courts have power to grant partial enforcement of a restrictive covenant
  - Exceptions to “blue penciling”
    - If the Court feels that the restriction is so overbroad as to be oppressive the Court can decide not to modify it

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### Injunctive Relief

- To obtain injunctive relief, an employer must show:
  - Reasonable probability of success on the merits
  - Irreparable harm
  - Balance of the equities
  - Public interest

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### Assignability

- Must be expressly stated
- Changes in business
- Transactions triggering a need for an assignment

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### Social Media and Restrictive Covenants

- What is social media?
  - “The use of web-based and mobile technologies to turn communication into interactive dialogue.” *Source:* Wikipedia (where else!)

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**Social Media and Restrictive Covenants**

- Types of Social Media Include:
  - Blogs
  - facebook
  - LinkedIn
  - twitter

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**Social Media and Restrictive Covenants**

- Information found on social media sites is likely not confidential
- Have a Social Media Policy in place
- Monitor contact with clients via social media when enforcing restrictive covenants

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**Thank you!**

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