COVENANTS NOT TO COMPETE

Corporate Counsel Institute
April 28, 2022

GOALS FOR THIS CLE

THREE :

1. **Unenforceable v. Overbroad**
2. **The Question of Employee Non-Solicitation Provisions**
3. **The Role of Irreparable Harm**

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UNENFORCEABLE
V.
OVERBROAD

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TEXAS BUS. & COMM. CODE § 15.50

Section 15.50(a) –

"[A] covenant not to compete is enforceable if it is ancillary to or part of an otherwise enforceable agreement at the time the agreement is made to the extent that it contains limitations as to time, geographical area, and scope of activity to be restrained that are reasonable and do not impose a greater restraint than is necessary to protect the goodwill or other business interest of the promisee."

TEX. BUS. & COMM. CODE § 15.50(A)

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TEXAS BUS. & COMM. CODE § 15.50

Section 15.51(c) –

"If the covenant is found to be ancillary to or part of an otherwise enforceable agreement but contains limitations as to time, geographical area, or scope of activity to be restrained that are not reasonable and impose a greater restraint than is necessary to protect the goodwill or other business interest of the promisee, the court shall reform the covenant."

TEX. BUS. & COMM. CODE § 15.51(C)

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THE TEXAS SUPREME COURT

Mann Frankfort Stein & Lipp Advisors v. Fielding

"Two initial inquiries must be made when determining whether an enforceable covenant not to compete has been created under section 15.50: (1) is there an 'otherwise enforceable agreement,' and (2) was the covenant not to compete 'ancillary to or part of' that agreement at the time the otherwise enforceable agreement was made.'"

Mann Frankfort Stein & Lipp Advisors, Inc. v. Fielding, 289 S.W.3d 844, 848 (Tex. 2009)

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"Non-Competes and Trade Secrets: It's Not Just Tech Anymore!"