

Negotiating a Non-Compete Clause: Key Principles

Key Principles

BY EMILY AST, ESQ., OWNER OF AST PHYSICIAN CONTRACTS, A LAW PRACTICE DEDICATED TO CONTRACT NEGOTIATION AND EDUCATION FOR PHYSICIANS AND THOSE IN THE MEDICAL FIELD

Non-compete agreements are a common component of employment contracts, designed to protect employers' interests by restricting employees from engaging in similar employment activities after leaving their current position. However, these agreements can significantly impact an individual's career options. Understanding how to negotiate a more favorable non-compete clause is crucial for professionals seeking to safeguard their future opportunities. While the specifics of non-compete agreements vary by state law, here are general principles and strategies that individuals can employ to navigate these agreements.

1 Assessing Geographic Restrictions:

One of the primary considerations when negotiating a non-compete agreement is the scope of its geographic restrictions. It's essential to carefully examine the language defining the geographical area in which the non-compete applies. For example, some agreements may specify a particular county or region. In such cases, it's important to evaluate whether the defined area is reasonable given the nature of the industry and market dynamics. For instance, restriction within a particular county may not seem like a large area, however, research may reveal that the county encompasses a vast geographical area (i.e. 100 miles), and therefore may impose undue limitations on future employment opportunities. Negotiating for a narrower geographic scope can enhance flexibility while still protecting the employer's legitimate interests.

2 Clarifying Practice Locations:

Another crucial aspect to consider is the locations from which the non-compete is enforced. Often, non-compete agreements may be written to extend beyond the individual's primary practice location to include other offices of the employer, or even the employer's affiliates. If an employer maintains many office locations across a wide distance, or forms partnerships with other practices and are therefore affiliated, this could expand the non-compete further. When negotiating, individuals should advocate for restricting the non-compete to locations where they have actively practiced or maintained a significant presence. It is more difficult for an employer to justify a legitimate business interest in restricting an individual from practicing near a location where the person has never practiced, as the individual would not have a patient base or name recognition in that area. Therefore, it is reasonable to request that any non-compete apply from locations where the individual held a significant or primary clinical practice, or the locations where the individual maintained a clinical practice. This ensures that the agreement aligns with the individual's professional activities and minimizes unnecessary restrictions on future employment prospects.

3 Incorporating Exceptions:

Negotiating for exceptions within the non-compete agreement can provide added flexibility and protection for individuals. Including provisions that exempt the individual from the non-compete obligations in certain circumstances, such as termination without cause or employer breaches of the agreement, can safeguard against unfair restrictions. Additionally, clauses addressing events like mergers, acquisitions, or consolidations that adversely affect the individual's economic interests can offer essential safeguards. By incorporating these exceptions, individuals can mitigate the impact of unforeseen changes in employment circumstances.

4 Negotiating Pre-Specified Damages:

In some jurisdictions, non-compete agreements may include pre-specified damages for violations. These predetermined amounts serve as a form of buyout, allowing individuals to compensate their former employers for breaching the non-compete restrictions. When negotiating such provisions, individuals should seek to align the specified damages with realistic financial considerations. Moreover, negotiating for the inclusion of these damages as part of future employment arrangements, such as a signing bonus or compensation package, can alleviate the financial burden of potential breaches.

Conclusion:

Navigating non-compete agreements requires careful consideration and strategic negotiation to achieve a favorable outcome. By understanding the key principles outlined above, individuals can protect their professional interests while honoring their contractual obligations. While state laws may vary, proactive understanding and engagement of non-compete clauses empowers individuals to shape their career trajectories and safeguard future opportunities.

Key Principles, Page 2 of 2



Contact Us:
astcontracts.com/contact

Proprietary Work Product- Not for Distribution or Reproduction

Disclaimer: Information provided for general informational purposes; does not constitute legal advice. Consult an attorney for legal counsel. Content is provided "as is;" no representation of accuracy. Liability for actions based on contents herein is expressly disclaimed.