The Non-Compete Playbook: Everything Arkansas Employers Should Have in their Arsenal

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A crucial employee leaves for a competitor. A promising candidate shows up carrying a non-compete from their former employer. Either way, the questions hit quickly: What can we do? What should we avoid? And what paperwork should we have in place to handle this sort of thing?

What employers should know is that Arkansas law gives them legitimate tools to handle both situations, but only if you wield the know-how, have the right documents ready, and know who to call before issues arise. Here is how an understanding of the "playbook" surrounding restrictive covenants can benefit employers when a crucial employee leaves or a new employee comes along carrying an old pesky restrictive covenant.

What is a restrictive covenant anyways?

Restrictive covenants come in several flavors, and it is important to know the subtle but key differences. Generally, in the employment context "restrictive covenant" pertains to three distinct buckets: (1) non-compete, (2) non-solicitation, and (3) confidentiality/non-disclosure. Non-compete agreements prevent a former employee from working for a competitor in a specific geographical area for a certain period of time. Non-solicitation agreements stop them from poaching your customers or recruiting your employees when they leave. Confidentiality and non-disclosure agreements protect sensitive business information from disclosure once an employee leaves for a competitor. Each serves a distinct purpose, and savvy employers layer these protections together to protect their business interests, especially when their employees are commonly dealing with highly sensitive trade secrets or confidential materials and information.

Generally, Arkansas courts will only enforce a restrictive covenant if it passes a three-part test.[1] First, the employer must have a legitimate business interest worth protecting. Second, the geographic scope of the restriction cannot be unreasonably broad. Third, the time restriction must be reasonable. Two years is generally considered a safe duration for post-2015 agreements, and geography should match where your business actually operates rather than an arbitrarily wide area.

Courts are not in the business of shielding companies from ordinary competition, however. If an employee never had access to customer lists, trade secrets, or confidential pricing information, trying to enforce a non-compete against them is likely a losing proposition. Think of it this way: a regional sales manager with deep customer relationships and access to pricing strategies and trade secrets of the company is a strong candidate for a non-compete. An installer who puts in fixtures and goes home is not.

The 2015 Statute Changed the Game

One of the most important dates for Arkansas employers to know is July 22, 2015. That is when Act 921 took effect and fundamentally changed how non-compete disputes are resolved.[2] Although it is becoming less prevalent the further we get from 2015, some employees may still be subject to agreements before that date.

For agreements signed before that date, courts apply an all-or-nothing approach. If any part of the agreement is too broad, the **entire agreement fails**.[3] For agreements signed after that date, courts are required to "blue pencil" overly broad provisions (so long as the agreement is governed by the statute)[4], meaning they will narrow unreasonable terms rather than throwing out the entire agreement.[5] This single change gives employers with modern agreements a significant advantage in enforcement.

If your company is still using restrictive covenant agreements that predate July 2015, you should seriously consider having employees sign updated versions. The benefits of blue penciling and the statutory presumption that immediate harm from a breach qualifies as irreparable harm can make the difference between a successful enforcement effort and an expensive failure.

Playing Offense: When Your Employee Leaves

When an employee who signed a restrictive covenant walks out the door and heads to a competitor, you need a strategic plan, not panic. The first step is almost never a lawsuit. A well-crafted demand letter often resolves the situation entirely. The letter identifies the agreement, describes the alleged breach, demands corrective action, and puts the new employer on notice of the employee's obligation to you. That notice alone can prompt the competitor to reassess whether your former employee is worth the legal risk, or they can take steps to assure you that no breach is taking place.

If the demand letter does not work, the next step is usually filing suit and seeking emergency injunctive relief. Under the non-compete statute, the immediate harm from a breach is considered irreparable, which makes it easier to obtain a preliminary injunction.[6] A recent Arkansas case illustrates what can happen: two key employees resigned from a metal recycling company, told their boss they were done with the industry, and then immediately opened a competing business across the street and started calling on their former employer's customers. The employer went to court and won, stopping the former employees from continuing to compete and damage their business.[7]

Playing Defense: When You Hire Someone with a Non-Compete

The flip side of enforcement is defense. When a promising candidate mentions they are subject to a non-compete, many employers either panic or ignore it entirely. Neither approach is wise.

The key defensive tool for the company is an employee acknowledgment form, which should be signed before the new hire starts work. This document requires the employee to disclose any existing restrictions, confirm they will comply with those obligations, and represent that they will not bring confidential information from their former employer. It should also include language stating that your company does not want, need, or intend to possess any such information. This simple piece of paper creates a paper trail showing that your company acted responsibly and can help keep you out of a tortious interference lawsuit from a former employer.

If a demand letter arrives anyway, do not panic, but take it seriously. Have an attorney review the alleged non-compete to determine enforceability, breach, and any other issues. Assess whether the employee is actually violating it based on their new duties. Conduct an internal review of your IT systems to see if the employee brought anything with them they shouldn't have. Then, determine how to respond with your counsel. Having these approaches in your toolbelt can save the company time, money, and stress in response to a highly contentious letter from a former employer.

Trade Secrets: Your Safety Net Even Without a Non-Compete

Something many HR professionals do not realize is that even without a non-compete agreement, you may still have legal options if a departing employee walks out the door with your confidential information classified as trade secrets. The Arkansas Trade Secrets Act protects formulas, processes, customer lists with detailed buying histories, pricing strategies, and similar information that derives value from being kept confidential.[8] If a departing employee takes this type of information and uses it to compete against you, you may have a claim against them regardless of whether they signed a non-compete.

The key is demonstrating that you took reasonable steps to keep the information they took secret. Password protection, limited access, and confidentiality agreements all help establish that you treated the information as confidential. Courts have found customer lists, specialized software, and proprietary marketing materials to be protectable trade secrets when employers maintained appropriate safeguards.[9]

The FTC Ban That Was Not

You may have heard that the Federal Trade Commission attempted to ban non-compete agreements nationwide in 2024. That effort was blocked in court before it could take effect.[10] As of today, non-compete agreements remain fully enforceable under Arkansas law, and employers should continue using them strategically and protecting themselves from them when necessary.

The world of non-competes, non-solicitations, and confidentiality agreements is alive and well, and it is ever-evolving.

What You Can Do This Week to Protect the Company

First, pull your existing restrictive covenant agreements and check the dates. If any predate July 2015, talk to your attorney about having employees sign updated versions under the current statutory framework. Second, implement an employee acknowledgment process for every new hire. Ask during the interview process whether candidates are subject to a non-compete and get a signed acknowledgment on the first day of work. Third, take an honest look at whether your agreements are protecting something worth protecting. Confidential information, customer relationships, and specialized training are legitimate interests. Preventing ordinary competition is not, and courts will not help you try to prevent it.

Restrictive covenant issues can feel daunting, but with the right preparation, documentation, and counsel, Arkansas employers can handle them with confidence. And the best time to get that preparation in place is well before you actually need it.

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[1] *Duffner v. Alberty*, 19 Ark. App. 137, 718 S.W.2d 111, 112 (1986); *Freeman v. Brown Hiller, Inc.*, 102 Ark. App. 76, 281 S.W.3d 749, 754 (2008). The three requirements are: "(1) the covenantee must have a valid interest to protect; (2) the geographical restriction must not be overly broad; and (3) a reasonable time limit must be imposed."

[2] Ark. Code Ann. § 4-75-101.

[3] *Federated Mut. Ins. Co. v. Bennett,* 36 Ark. App. 99, 818 S.W.2d 596 (1991) ("When covenant not to compete is too far-reaching to be valid, court will not make new contract for the parties").

[4] Ark. Code Ann. § 4-75-101 expressly does not apply "to a person holding a professional license under Ark. Code Ann. § 17-3-101 et seq. This broad carve-out encompasses healthcare and medical professionals licensed under that statute. For those individuals, any non-competition agreements are governed by the common law, which is generally a more strenuous standard. Regarding physicians,

covenants not to compete that "restrict the right of a physician to practice within the physician's scope of practice [are] void." Ark. Code Ann. § 4-75-101(k)(1).

[5] Ark. Code Ann. § 4-75-101(d)–(e).

[6] Ark. Code Ann. § 4-75-101(e).

[7] *Nonmacher v. Tri-State Iron & Metal Co.,* 2025 Ark. App. 356, 718 S.W.3d 1.

[8] Ark. Code Ann. § 4-75-601(4), as quoted in *Cardinal Freight Carriers, Inc. v. J.B. Hunt Transp. Servs., Inc.,* 336 Ark. 143, 987 S.W.2d 642 (1999).

[9] *Freeman,* 102 Ark. App. 76, 281 S.W.3d 749.

[10] *Ryan, LLC v. Fed. Trade Comm'n,* 2024 WL 3879954 (N.D. Tex. Aug. 20, 2024).