

Employment Law

Employment issues are more often becoming the subject of litigation and disputes between our clients, their employees, sales representatives, and others working on their behalf. Particularly as the economy becomes stronger, so do the desires of employees and agents to demand a larger “piece of the pie;” undertake competitive actions in their best interests and contrary to those of your company; and, in essence, disregard their fiduciary duties. Conversely, employers who have experienced employment disputes have begun to aggressively protect their interests through preparation of detailed employment agreements and non-competition covenants.

EMPLOYMENT AGREEMENTS

Employment Agreements are commonly being used by employers to assure that employees comply with their fiduciary duties. A significant amount of litigation arises from employers not appropriately protecting their interests via employment agreements which oftentimes contain the following major clauses:

- Non-Disclosure Provisions - The Ohio Revised Code provides that trade secrets and other confidential information shall not be utilized by employees or other parties, but the employer is required to undertake affirmative efforts to assure that such information remains confidential and proprietary. By stating that an employee may not utilize such proprietary information and trade secrets during and after employment, employers can limit claims by employees that information (such as customer lists, pricing information, etc.) is not generally known to the public and, therefore, become effective as barriers, thus limiting prospective unfair competition.
- Non-Solicitation/Non-Compete Clauses – Employers can limit former employees or parties with whom they deal with from competing against the employer for a reasonable period of time (usually two (2) years).
- Employee Compensation Benefits – Setting forth compensation and benefit guides is extremely critical to assure that disputes do not subsequently arise, particularly in areas where commission structures and incentives apply

EMPLOYMENT MANUALS

Employment manuals have become appropriate vehicles to guide employers and employees in respect to their continuing relations. Pertinent clauses include:

- rights to modify compensation and other benefits unilaterally by the employer
- termination and grievance procedures
- utilization of vacation and sick time
- drug testing rights of the employer

Policy manuals work as strong evidence in the event of claims being made for improper termination, worker's compensation, and unemployment matters.

AT-WILL EMPLOYMENT AND WRONGFUL DISCHARGE

Although Ohio is an “employment at will” state (employees are not entitled to continued employment unconditionally), there has been movement toward allowing claims of “employment

entitlement” such that measures must be undertaken by employers to mandate recognition of at-will employment by their employees.

Wrongful discharge cases are becoming more common as individuals (with and without employment agreements) contend that they are entitled to an inherent right to continued employment. Properly-drafted employment manuals and employment agreements can oftentimes defeat legal and equitable arguments by employees seeking the Court's interpretation that their employment is an entitlement, rather than a privilege.

SEXUAL HARASSMENT IN VIOLATION OF EQUAL OPPORTUNITY LAW CLAIMS

Combined with the documents presented above and through the utilization of strong policies limiting discrimination in respect to race, color, creed, gender, etc., employers and their officers can avoid unwarranted claims of harassment in respect to their actions as well as those of their employees.

REPRESENTATION OF EMPLOYEES

In the same fashion that we represent employers, we also represent employees. Our representation includes initial employment negotiations as well as matters involving termination, including severance packages and continuing compensation and benefits post-termination; etc. All of those issues addressed above are similarly important and significant in respect to employees.

