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Enforceability of Non-Compete Provisions During COVID-19 Pandemic

In the financial industry, as in others, employees often enter into employment agreements that require them to give early notice of their intent to terminate their employment (often three to six months prior to leaving the job), followed by an agreement to comply with a covenant not to compete against their former employer for a period of time following termination of their employment. These covenants against competition generally are disfavored under common law and have been upheld by courts only where the employer could demonstrate that they were carefully drafted to address legitimate employer interests. The COVID-19 pandemic and resulting economic instability may give rise to new employee defenses against the enforcement of non-compete clauses.

Covenants Against Competition

The law on covenants against competition varies from state to state. Such covenants are an exception to the typical rule against enforcing contracts that act as restraints of trade and are enforced only if they reasonably balance the interests of the employer, the employee, and the public. Narrowly tailored noncompete clauses are justified to the extent that they prevent an employee from unfairly competing against his or her former employer by using confidential trade information learned, or customer relationships developed, as a result of the employment relationship. An employee is thus prohibited from turning his or her use of the employer's resources against the employer.

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