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### District of Arizona Evaluates Restrictive Covenants



The U.S. District Court for the District of Arizona recently evaluated the reasonableness of two restrictive covenants—the nonsolicitation of customers and the nonsolicitation of employees—along with claims related to violation of the company's confidential information policy.

In *Fire Security Electronics & Communications Inc. v. Nye*, 2024 WL 620813, an electronics company initiated an action against two of its former employees, alleging breach of contract, among other claims, and seeking a preliminary injunction that would prohibit them from soliciting the company's customers and employees. In granting the preliminary injunction request in part, the court held that the company was unlikely to succeed on its breach of contract claim because the underlying restrictive covenants were unreasonable as to scope and duration. In contrast, the court held that the company was likely to succeed on the breach of confidentiality claim based on obligations in the company's employee handbook and employment agreement.

In opposing the company's preliminary injunction motion, the two former employees disputed the enforceability of their agreements with the company, which contained both customer and employee nonsolicitation covenants. Consistent with Arizona caselaw enforcing restrictive covenants that are not broader than necessary and that protect an employer's legitimate business interest, the court evaluated the restrictive covenants based on the scope of the activity prohibited and duration.

First, regarding scope, the company's *customer* nonsolicitation covenant prohibited the former employees from "call[ing] upon, solicit[ing] or in any manner contact[ing] for the purpose of soliciting" any company customer or "do[ing] or refrain[ing] from doing anything that would interfere with, diminish, impair or otherwise adversely affect [the company's] relationship" with any current *or prospective* customer. The court determined it was unlikely that the company could succeed in showing that the covenants were reasonable because the covenant did not merely limit the former employees' ability to solicit customers, but it prohibited them from doing anything that could diminish or affect the company's relationship with its current *or future* customers. In finding this scope was likely overbroad, the court emphasized that the company did not have exclusive

contractual relationships with its customers—another factor weighing against the reasonableness of customer nonsolicitation covenants.

Next, as to the nonsolicitation of employees, the court similarly did not find it likely that the company could successfully show the covenant was necessary to protect its legitimate business interest. In effect, the former employees were prohibited from hiring any of the company's employees irrespective of (1) when that employee ended employment with the company and (2) the extent of the employee's previous relationships with the two former employees, if any.

Finally, with respect to duration, the restrictive covenants in question lasted for a period of two years. The court found that the company did not demonstrate it was likely to succeed in showing that the duration of the covenants was reasonable. The company presented evidence at the hearing that it could take anywhere from several months to a year or more to replace the former employees. The court remarked that "there is no evidence that two years is necessary to safeguard [the company's] interest in either maintaining its customer relationships or its employees" and cited caselaw suggesting two-year covenants may be unreasonable in Arizona.

As courts continue to develop caselaw in Arizona regarding restrictive covenants, employers who utilize restrictive covenants in Arizona should review their agreements with employees and consult experienced counsel with any questions. Employers should also keep in mind any developments as to the Federal Trade Commission ban on noncompete agreements described further [here](#).

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