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Noncompete Roundup – Florida

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Florida historically has taken a tough stand toward enforcing noncompetes, as a recent state-court appellate case illustrates. For those unfamiliar with Sunshine State law on noncompetes, Florida has a statute that requires noncompete agreements to be (a) in writing, (b) signed by the employee, (c) reasonable in terms of time and geography and (d) reasonably necessary to protect the legitimate business interests of the employer. While protecting customer relationships is considered to be a legitimate business interest worthy of protection, this normally does not extend to *former* customers who have no obligation to provide future business. The case, *Evans v. Generic Solution Engineering, LLC*, Case No. 5D15-578, involved a tech company – eponymously named "Tech Guys" – which constructed automated online sales and marketing systems. The business relied exclusively on independent contractors to work with its customers. As is typical in these situations, Tech Guys required its contractors to sign onto non-compete agreements. After two of the contractors left to form their own competing business, Tech Guys sued to block them from working with its customers. Unfortunately for Tech Guys, while one of the contractors had a current noncompete, the other one had successfully negotiated the noncompete provision out of his contract when Tech Guys last renewed their relationship. Understandably, the trial court tossed out the request to enjoin the unbound contractor. Turning back to the contractor who actually had a noncompete, the trial court granted Tech Guys' request to enjoin him from calling on its customers. On appeal, Florida's Fifth District Court (which covers North-Central Florida, including Orlando) reversed the injunction order, finding that there was no competent, substantial evidence that enforcement of the non-compete was necessary to protect a legitimate business interest. Focusing on two former Tech Guys' customers that the contractor had been accused of soliciting, the court explained that one customer had never maintained an exclusive relationship with Tech Guys and there was no expectation that Tech Guys would continue to work with that customer. Tech Guys similarly failed to present sufficient evidence to demonstrate that it had a meaningful relationship with the other customer. There are several lessons employers wanting to enforce restrictive covenants in Florida can learn from *Evans*:

- Employers who agree to remove noncompete restrictions need to think about the implications this will have down the road. The lack of a noncompete hampered the company's ability from the get-go with the contractor who negotiated the term out of his agreement. This also undermined the company's ability to argue that it was acting to protecting legitimate business interests: succinctly, how important can those interests be if the company is willing to negotiate them away?

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- Employers intending to rely upon a customer-based legitimate business interest must be ready to provide evidence that they have exclusive relationships with the customers they are at risk of losing, or at a minimum, that they have some reasonable expectation that they will continue to provide services to those customers in the future.

Noncompetes are and remain enforceable in Florida, but employers and their counsel need to be mindful of the requirements of local law and stay on top of changes in the law. This is critical both with respect to crafting noncompete agreements and also in taking steps to enforce them in court.