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Think Before You Shoot On Non-Compete: Why The Threatening Letter May Not Be Your First Move

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I recently wrote [an article](#) about the importance of thinking a few steps ahead before businesses have their lawyers send the proverbial nasty lawyer letter. Those letters certainly have their place in many contexts, but the article explains why you should think through the possible responses to the letter and be sure before the letter goes in the mail that you are ready to deal with the consequences. So it is when an employee departs and is believed to be working for a competitor in violation of a non-compete agreement.

There are many situations where it is appropriate to begin the chess match of enforcing the non-compete by writing a letter notifying the former employee – and perhaps the employee’s new employer – that she is in violation of her agreement and threatening further action. However, as we have explained here multiple times, [non-compete law](#) differs markedly from state to state.

One risk to consider when you send the described letter: If the law in the recipient’s state is less favorable to enforcement, what if the employee and/or the new employer run to court *there* and get a more favorable forum. If you had not sent the letter, you might have been able to get the matter to court in *your* state. [This article](#) plays through the various scenarios in the non-compete setting in more detail. The bottom line – don’t rely on a one-size-fits-all reflex (whether it be the client’s or the lawyer’s) response. As

noted, it's a chess game, not one shot for winner-takes-all.

