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Noncompetes In Mexico

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I recently had occasion to look into Mexican law regarding non-competition agreements. For those who are unfamiliar with Mexican noncompete law, it can be summarized succinctly: see California. Like the Golden State, Mexico takes a dim view toward non-competition agreements. In fact, the unenforceability of restrictive covenants is not even a matter of Mexican statute, it's actually embedded into the country's Constitution. Specifically, Article 5 of the Mexican Constitution provides that "the State cannot permit the execution of any contract, covenant, or agreement having for its object the restriction, loss or irrevocable sacrifice of the liberty of man, whether for work, education, or religious vows . . . Likewise no person can legally agree to his own proscription or exile, or to the temporary or permanent renunciation of the exercise of a given profession or industrial or commercial pursuit. A labor contract shall be binding only to render the services agreed on for the time set by law and may never exceed one year to the detriment of the worker, and in no case may it embrace the waiver, loss, or restriction of any civil or political right. Non-compliance with such contract by the worker shall only render him civilly liable for damages, but in no case shall it imply coercion against his person." Another provision, Article 123(aa), similarly provides that contractual stipulations implying the waiver of any right designed to favor the worker in the laws of protection and assistance for workmen shall be considered null and void. In short, covenants not to compete are unenforceable in Mexico and there is no chance of an employer successfully obtaining injunctive relief to stop an employee from working for a competitor. Worse, covenants not to solicit customers similarly are regarded in Mexico as unenforceable. On the other hand, non-disclosure provisions designed to protect a company's trade secrets and confidential and proprietary business information can be enforced. In other words, Mexican law on restrictive covenants resembles that of California. To get around these restrictions, some employers opt to pay employees a lump sum of money when they start a job to buy their voluntary compliance with a noncompete. If the employee leaves and starts working for a competitor, the employer at least has the ability to file suit to get the money back. While this will not stop a disloyal employee from leaving for the competition, it may give them a reason to hesitate before doing so – particularly if the amount provided up front is significant. The alternative is to write off the noncompete altogether and opt to seek remedies associated with trade secrets and confidential information.

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