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# State Lines May Not Be When It Comes To Noncompetes

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Hans Murphy's post here last week on the recent Texas noncompete decision is just the latest reminder that state laws vary dramatically when it comes to the enforcement of noncompete agreements. Employers often think that if they specify in their noncompete agreements that the law of their home state will be applied, then they will avoid the difficulties encountered in enforcing agreements in Texas and other less enforcement-friendly states. In fact, courts will often disregard choice of law clauses if their effect would be to negate the public policy of the state in which the case is being litigated. In other words, if a former employee beats you to the courthouse in a state more friendly to the employee, your choice of law language might be worthless.

Choice of forum clauses are somewhat more powerful than choice of law clauses. A choice of forum clauses dictates that an agreement must be litigated in a particular state, and these clauses generally receive more deference from courts. The deference is not absolute, however.

In short, if your employees can compete with you from another state – and it is increasingly uncommon that they cannot – you must be aware of the laws of those states and factor those in to your noncompete program. Here is an article that I wrote recently for Ohio lawyers exploring this topic in more details (note: the article begins on page 4 of the attached publication). You should consult with your counsel about the variety of state noncompete laws can affect your noncompetes.

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