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Employee non solicitation agreement

A non-solicitation, or non-solicit, agreement is a promise by both the target company and the acquirer that for a certain period of time after closing they will refrain from engaging in business that is competitive to the existing or acquired business and will not try to lure or hire away each other's customers or employees. This agreement is particularly pertinent when a larger company acquires a smaller one that operates in the same industry. When an organization acquires another one, two prominent types of clauses are signed by both parties: non-compete and non-solicit. Non-compete agreements prevent one company from partnering with a competitor or from creating a business that is directly competitive in any way to either organization. Non-solicit agreements, on the other hand, stipulate that one organization cannot lure or hire the employees of another organization for a certain period of time, which prevents loss of information and/or expertise for both. There is also another type of clause that can be included in a non-solicit agreement called the "no-shop" clause. Under this clause, the target company agrees to not solicit or give any information to negotiate a deal with another potential buyer. This clause is mostly used with private companies because public companies have a "fiduciary out" clause to prevent non-solicit agreements. Non-solicit agreements are also applicable when a buyer purchases assets from another business entity. When a non-solicit agreement is in place, it prohibits the buyer from soliciting the seller's employees, customers or suppliers. It is primarily used to protect the investment of the buyer, especially when it is an asset purchase. If this commitment is not in place, it could affect the value of the assets purchased for a price. Share this Term Non-Competition Agreement Non-Disclosure Agreement Protect Your Company With Non-Solicitation Agreements. Understanding Non-Solicitation Agreements In Calgary, Alberta People often misunderstand non-solicitation agreements. They are different than non-competition agreements. A non-competition agreement keeps someone from competing with your business. A non-solicitation agreement keeps someone from soliciting your clients or employees. The non-solicitation agreement lawyers at Kahane Law Office in Calgary, Alberta have the experience to help you protect your business. Watch our video for more information on non-solicitation agreements in Alberta. What Soliciting Means Many clients come to us knowing this term but not understanding the concept. In the context of business this concept is simple. Soliciting means that a person approaches a client, employee or supplier and solicits or asks for that person or business to then work with the person asking. Soliciting often takes the form of phone calls, lunches and emails. Generally, it is the action of asking for the business or work and not the mechanism that matters. What Is A Non-Solicitation Agreement? A non-solicitation agreements is exactly what it sounds like. Solicitation means asking or requesting. It is an agreement that keeps employees or contract workers of a business from asking or requesting your existing clients to move their business to another company. These contracts also restrict the solicitation of company employees to change to a new employer. Finally, the term also often includes a restriction on a person seeking to hire a supplier of the business. This usually occurs when a specific supplier is a key part of the business operation or business marketing. A non-solicitation clause (instead of a separate agreement) may also be inserted into a contract or employee agreement. How Enforceable Are These Contracts? In many cases a non-solicitation agreement is more enforceable than a non-competition agreement. The courts do not support agreements that keep people from earning a living in their regular job: a non-competition agreement prevents that. A non-solicitation agreement lets them earn a living, they just cannot solicit clients or employees from their previous employer. To be enforceable, there needs to be restrictions of time (such as for one year) and the terms cannot be unreasonable. We often draft the contract looking at ways to minimize the impact of it on the other person to help ensure the enforceable nature. For example, we limit the impact by focusing: Geographic Regions: This means limiting a restriction on soliciting people to a specific area. Prohibiting a person from soliciting geographically (ie the person is free to solicit a certain number of kilometers from the business.) allows the person to still work, just outside the area that your business functions. For example, the limit may include a radius or specific cities or towns. Time Frame: This limits relates to how long the restriction remains in place. Most non-solicitation agreements restrict soliciting only for a specific time frame. Often this time is one or two years. Long terms run the risk of a court stating that it is an unfair restriction on a person's ability to work. What A Non-Solicitation Contract Does Not Protect? A non-solicitation agreement, in Alberta, cannot protect against the former employee or contractor from accepting clients of your company. A non-solicitation agreements only protects against that person from approaching or soliciting business in any way. For example, if a client decided on their own to find the former employee and use their services, that is not a breach of the agreement. When litigated, proving a former employee solicited the business of a customer is a challenge for the business. Most often this prove occurs in the form of the actual client providing the proof as their loyalties lay with the business owner and not the employee. Situations Where You Need A Non-Solicitation Agreement Many situations exist where companies require contracts to protect themselves. A key aspect of most businesses is the people who work there. Losing those people causes problems in operations, relationships with clients and creates additional costs. In order to protect your business, the following are examples of situation where you really need a non-solicitation agreement. This contractual obligation often occurs as a term in a contract, you have the person sign. Alternatively, the contract also functions as a stand alone agreement. When you need them? For example, these agreements protect companies with: All of their employees; Any contract worker brought into the business workplace; Consultants retained by the business; and lastly Situations disclosing client lists to prospective buyers of the business. Finally, we also note that these contracts function for both incorporated businesses and for sole proprietors (people operating a business without a corporation.) How To Enforce Your Agreement If your employee or contractor breaches these agreements, taking action is key. The Courts in Alberta offer several remedies. The first step often includes serving a cease and desist letter to stop the person or business from soliciting contrary to the contract. The next step involves filing a claim to either force them to stop or seeking monetary damages. Remember, in Alberta, while an individual has the ability to self-represent themselves, a corporation needs to hire a lawyer to appear in court. Getting The Non-Solicitation Agreement Help You Need We work with you to protect your business. Non-solicitation agreements are complex documents that must be drafted very carefully to protect the future of your business. Professional and experienced guidance is worth the low investment. The non-solicitation agreement lawyers at Kahane Law Office can help with drafting these contracts for you and all your legal needs. CONNECT NOW. We can be reached toll-free at 1-877-225-8817 (or 403-225-8810 locally in Calgary, Alberta), or email us directly here. Generally, these clauses are enforceable when contained in a signed employment agreement. The object of these non-solicitation clauses is to protect the former employer from the former employee using information and /or knowledge gained during their employment that can be used to the detriment of the former employer. Although this is similar, it is important not to confuse Non Solicitation clauses with Restraint of Trade clauses. Non Solicitation is usually broken down in to two distinct categories. The first details how the former employee cannot attempt to solicit or entice other employees, of the former employer, to move away from their current jobs with that employer. The second area these clauses cover is protection over the current clients and customers of the former employer that the former employee has had dealings with. Non Solicitation clauses are usually defined for a set period of a number of months. The theory behind these clauses is to stop you taking with you all your current customers and clients when you move jobs. The period specified only needs to be long enough to give the former employer an opportunity to establish new relationships with these customers and clients with another employee of theirs. However, if these clauses become to overreaching then they may not be enforceable or, our courts may choose to amend them. Overreaching includes being too long in duration or, if the definition of who you are not allowed to solicit is too wide. For example, if non solicitation specified all the company's customers or clients, as opposed to just the customers and clients that you had dealings with, then the clause can be viewed as a punishment as opposed to protection of the former employer. Likewise, if the clause contained suppliers as well as customers and clients, then I would not be surprised if our courts amended the clause to remove suppliers as, generally, this would not affect the former employer in any material way. Contact us should you wish to discuss whether you can enforce your non solicitation on a former employee or if your former employer is trying to enforce a non solicitation upon you that you do not think is fair or reasonable. Non-Solicitation of Employees. The Executive recognizes that he possesses and will possess confidential information about other employees of the Company and its subsidiaries and affiliates relating to their education, experience, skills, abilities, compensation and benefits, and inter-personal relationships with customers of the Company and its subsidiaries and affiliates. The Executive recognizes that the information he possesses and will possess about these other employees is not generally known, is of substantial value to the Company and its subsidiaries and affiliates in developing their business and in securing and retaining customers, and has been and will be acquired by him because of his business position with the Company. The Executive agrees that, during the Restricted Period, he will not, directly or indirectly, (i) solicit or recruit any employee of the Company or any of its subsidiaries or affiliates (a "Current Employee") or any person who was an employee of the Company or any of its subsidiaries or affiliates during the twelve (12) month period immediately prior to the date the Executive's employment terminates (a "Former Employee") for the purpose of being employed by him or any other entity, or (ii) hire any Current Employee or Former Employee. Non-Solicitation of Employees. During the Restriction Period, the Executive shall not directly or indirectly contact, induce or solicit (or assist any Person to contact, induce or solicit) for employment any person who is, or within twelve (12) months prior to the date of such solicitation was, an employee of the Company or any of its Affiliates. Non-Solicitation of Employees. While employed by the Company and, in the event of a termination of Executive's employment (other than in the event of a Change of Control and subsequent termination by the Company without Cause or by Executive for Good Reason or a termination due to non-renewal of the Term by the Company at the first time or after the Change of Control that the Term is up for renewal), for a period of one year thereafter, in consideration of the obligations of the Company hereunder, including without limitation its disclosure of Confidential Information to Executive, Executive shall not directly or indirectly, for himself or as principal, agent, independent contractor, consultant, director, officer, member, or employee of any other person, firm, corporation, partnership, company, association or other entity, either (i) hire, attempt to employ, contact with respect to hiring, solicit with respect to hiring or enter into any contractual arrangement with any employee or former employee of the Company or any Company Affiliate, or (ii) induce or otherwise advise or encourage any employee of the Company or any Company Affiliate to leave his or her employment; unless, in each such case, such employee or former employee has not been employed by the Company or a Company Affiliate for a period in excess of six months at the time of such solicitation, attempt to employ, contact, employment or inducement. Non-Solicitation of Employees. During Executive's employment with the Company, and for the Period of Post-Employment Non-Competition Obligations, Executive will not, either directly or indirectly, call on, solicit, or induce any other employee or officer of the Company or its affiliated entities whom Executive had contact with, knowledge of, or association with in the course of employment with the Company to terminate his employment, and will not assist in such a solicitation. Non-Solicitation of Employees. During the Restriction Period, Executive shall not, without the prior written permission of the Board, directly or indirectly induce any Senior Employee of the Company or any of its affiliates to terminate employment with such entity, and shall not directly or indirectly, either individually or as owner, agent, employee, consultant or otherwise, offer employment to or employ any Senior Employee unless such person shall have ceased to be employed by the Company or any affiliate for a period of at least six (6) months. For the purpose of this Paragraph C, "Senior Employee" shall mean a person who, at any time during the last twelve months of Executive's period of employment hereunder: Non-Solicitation of Employees. The Executive agrees that during the Executive's employment by the Employer hereunder, and in the event of the Executive's Termination of Employment, regardless of the reason, for the duration of the Post-Termination Period, the Executive will not (except on behalf of or with the prior written consent of the Employer) on the Executive's own behalf or in the service or on behalf of others, solicit, recruit or hire away or attempt to solicit, recruit or hire away, any employee of the Employer with whom the Executive had material contact during the last two (2) years of the Executive's employment, whether or not such employee is a full-time employee or a temporary employee of the Employer, such employment is pursuant to written agreement, for a determined period, or at will. Non-Solicitation of Employees. Executive recognizes the substantial expenditure of time and effort which the Company devotes to the recruitment, hiring, orientation, training and retention of its employees. Accordingly, Executive agrees that, for a period beginning on the Effective Date and ending twelve (12) months after termination of Executive's employment with the Company, regardless of the reason for such termination, Executive shall not use any Proprietary Information, directly or indirectly, for himself or on behalf of any other person or entity, solicit, offer employment to, hire or otherwise retain the services of any employee of the Company in a position classified as exempt from overtime pay requirements. For purposes of the foregoing, "employee of the Company" shall include any person who was an employee of the Company at any time within six (6) months prior to the prohibited conduct. Non-Solicitation of Employees. The Employee agrees that during the ----- Employee's employment by the Employer hereunder and, in the event of the Employee's termination other than by the Employer without Cause pursuant to Section 3.2.1(b), by the Employee for Cause pursuant to Section 3.2.3(a), or by the Employee pursuant to Section 3.2.3, for a period of twelve (12) months thereafter, the Employee will not, within the Area, on the Employee's own behalf or in the service or on behalf of others, solicit, recruit or hire away or attempt to solicit, recruit or hire away, directly or by assisting others, any employee of FLAG or its Affiliates, whether or not such employee is a full-time employee or a temporary employee of FLAG or its Affiliates and whether or not such employment is pursuant to written agreement and whether or not such employment is for a determined period or is at will. Non-Solicitation of Employees. During the Term of Employment and for a period of 24 months following the Executive's termination of that employment with the Company, the Executive shall not, without the written permission of the Company or an affected affiliate, directly or indirectly (i) solicit, employ or retain, or have or cause any other person or entity to solicit, employ or retain, any person who is employed by the Company or was employed by the Company during the 6-month period prior to such solicitation, employment, or retainer, (ii) encourage any such person not to devote his or her full business time to the Company, or (iii) agree to hire or employ any such person.

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