

Restrictive Covenants

Restrictive covenants are used to protect employers from unfair competition by their employees and former employees.

They typically include agreements to protect the employer's confidential information, to restrict solicitation (or "poaching") of the employer's customers and staff, and sometimes covenants against competing with the employer's business.

Under relatively new laws in Maryland and the District of Columbia (DC), the use of "non-compete" covenants has been restricted – but not eliminated. DC rules on non-competes are complex and, in one of their less complicated aspects, generally rule out the use of non-competes for workers earning less than \$150,000 per year. Maryland also has a compensation threshold for using non-compete agreements, but it is much lower (\$13.25 per hour as of October 1, 2023, and rising to \$22.50 per hour on January 1, 2024). These non-compete restrictions in DC and Maryland generally do not prohibit the use of non-solicitation covenants and confidentiality agreements. Maryland, DC, and Virginia also require restrictive covenants to be reasonable in their scope and duration.

When properly prepared and implemented, restrictive covenants can provide employers with protection against unfair competition. This requires, in addition to knowledge of the applicable legal rules, an understanding of the employer's business and careful drafting. At McMillan Metro Faerber, P.C., our attorneys start with the client's objectives, and learn about the nature of your business and the style and substance of your relationships with relevant employees. We can consider alternatives such as non-compete, non-solicitation and non-disparagement provisions – then work to create realistic, enforceable agreements.

Attorneys

A. Howard Metro
David P. Shapiro
Andrew H. Milne