



Idaho's Non-Compete Statute and Its Practical Application

Presented By



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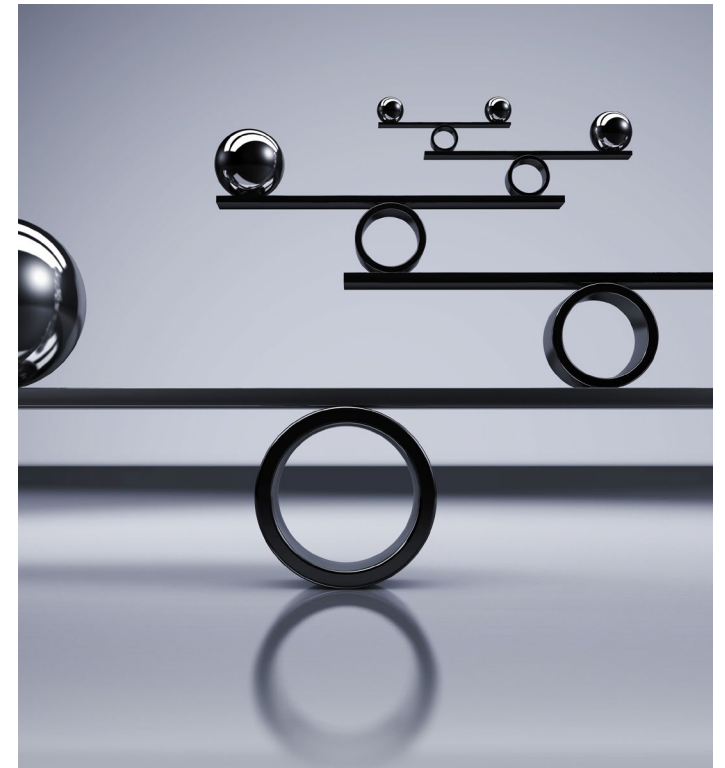
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Agenda

- Idaho's Non-Compete Statute
- Case Law
- Practical Application
- Considerations for Employees
- Considerations for Employers
- Questions?

Idaho Code §44-2701: Agreements and covenants protecting legitimate business interests

- A **key employee** or **key independent contractor** may enter into a written agreement or covenant that protects the employer's **legitimate business interests** and prohibits the key employee or key independent contractor from engaging in employment or a line of business that is in direct competition with the employer's business after termination of employment, and the same shall be enforceable, if the agreement or covenant is **reasonable as to its duration, geographical area, type of employment or line of business**, and **does not impose a greater restraint than is reasonably necessary to protect the employer's legitimate business interests**.



Idaho Code §44-2702 (Definitions)

(1) “**Key employees**” and “**key independent contractors**” shall include those employees or independent contractors who, by reason of the employer's investment of time, money, trust, exposure to the public, or exposure to technologies, intellectual property, business plans, business processes and methods of operation, customers, vendors or other business relationships during the course of employment, have gained a high level of inside knowledge, influence, credibility, notoriety, fame, reputation or public persona as a representative or spokesperson of the employer and, as a result, have the ability to harm or threaten an employer's legitimate business interests.

(2) “**Legitimate business interests**” shall include, but not be limited to, an employer's goodwill, technologies, intellectual property, business plans, business processes and methods of operation, customers, customer lists, customer contacts and referral sources, vendors and vendor contacts, financial and marketing information, and trade secrets as that term is defined by chapter 8, title 48, Idaho Code.

Idaho Code §44-2703: Construction and Enforcement



- To the extent any such agreement or covenant is found to be unreasonable in any respect, a court shall limit or modify the agreement or covenant as it shall determine necessary to reflect the intent of the parties and render it reasonable in light of the circumstances in which it was made and specifically enforce the agreement or covenant as limited or modified.

Idaho Code §44-2704: Restriction of direct competition— Rebuttable presumptions

(1) Under no circumstances shall a provision of such agreement or covenant, as set forth herein, establish a postemployment restriction of direct competition that exceeds a period of eighteen (18) months from the time of the key employee's or key independent contractor's termination unless consideration, in addition to employment or continued employment, is given to a key employee or key independent contractor. Nothing in this chapter shall be construed to limit a party's ability to otherwise protect trade secrets or other information deemed proprietary or confidential.

(2) It shall be a rebuttable presumption that an agreement or covenant with a postemployment term of eighteen (18) months or less is reasonable as to duration.

(3) It shall be a rebuttable presumption that an agreement or covenant is reasonable as to geographic area if it is restricted to the geographic areas in which the key employee or key independent contractor provided services or had a significant presence or influence.

(4) It shall be a rebuttable presumption that an agreement or covenant is reasonable as to type of employment or line of business if it is limited to the type of employment or line of business conducted by the key employee or key independent contractor, as defined in section 44-2702, Idaho Code, while working for the employer.

(5) It shall be a rebuttable presumption that an employee or independent contractor who is among the highest paid five percent (5%) of the employer's employees or independent contractors is a “key employee” or a “key independent contractor.” To rebut such presumption, an employee or independent contractor must show that it has no ability to adversely affect the employer's legitimate business interests.

Case Law

- *Blaskiewicz v. Spine Institute of Idaho*, 171 Idaho 201 (2022)
- *Kibble & Prentice Holding Company v. Tilleman*, 643 F. Supp.3d 1123 (D. Idaho 2022)
- *Frieburger v. J-U-B Engineers, Inc.*, 141 Idaho 415 (2005)
- *Intermountain Eye and Laser Centers, PLLC v. Miller*, 142 Idaho 218 (2005)
- *Pinnacle Performance, Inc. V. Hessing*, 135 Idaho 364 (2001)

Practical Application

- “Key Employee” – It goes beyond what is in the job description or offer letter. What does the day-to-day look like for the employee?
- Shifting focus from a traditional “non-compete” to non-solicit and confidentiality agreements
- Duration of non-competes: impractical for both employer and employee
- Risky to ask for forgiveness v. permission—employer may have claim for tortious interference with contract that exposes next employer in addition to employee

Practical Considerations for Employees

- What agreements were signed, if any?
- Are the provisions enforceable?
- Be cautious reaching out to customers and/or employees about a new job.
- Navigation of next job:
 - Notify next employer of any non-compete/non-solicit obligations
 - Craft position to avoid violation if enforceable
 - Don't use any confidential information from your prior job.

Practical Considerations for Employers

Internally

- Consider your legitimate business interests.
- Audit the employees subject to restrictive covenants.
- Identify your trade secrets and confidential information – who has access?

Hiring

- Ask if a candidate is subject to any restrictive covenants.
- Direct a new hire – in writing – not to violate any restrictive covenants.
- Direct a new hire – in writing – not to use any confidential information from their prior employer.



QUESTIONS?