

WASHINGTON BUSINESS JOURNAL


Friday, February 20, 2009

Tips and Talk

Rock star salespeople might not sign noncompetes

Washington Business Journal - by [Nancy McCarthy](#)

Each month I host a C-level Rainmaker Roundtable, and a recent topic was the ins and outs of noncompetes in the Washington area. Because we focus our discussions on protecting or generating revenue in most of our meetings, we eventually discussed whether it is a good idea to require the sales team to sign a noncompete.

The discussion became enthusiastic, and all the executives in attendance told their war stories. I started the discussion by pointing out that even though I worked for some of the best-managed Fortune 500 companies, including  **General Electric Co**, I never signed a noncompete as a salesperson or manager.

As the discussion evolved, it became clear this is a hot topic. Around the table were companies that had strict requirements for their employees to sign noncompetes, and some who had none.

Next to me was a chief executive officer of a top company in its field, who said: "I would not want to hire a salesperson who needed a job bad enough to sign a noncompete. Only someone desperate for a job would sign one. I want to hire that rainmaker who has other job offers. Sales is that important."

Generally speaking, a noncompete is enforceable if it is not any broader than necessary to protect the company's interests and doesn't unreasonably restrict the employee's ability to earn a livelihood.

I had a client recently who had a noncompete for everyone, including sales. I was helping the business hire a team of rock star rainmakers when I learned it required a 16-month to two-year noncompete. The length is longest for senior management. I was concerned that the company would not attract rock stars because of the broad non-compete. The CEO had never considered that possibility.

During a discussion with an attorney, recommendations were made to limit the noncompete to specifically named clients for specific services and limit it to a year. He said this gave the company protection that would hold up in court because the existing noncompete was too long and too broad.

It is frustrating for companies to spend significant time and resources to develop a lucrative client, simply to have a salesperson leave with that client. Noncompetes are becoming more common as management considers the benefits, but the agreements need to be balanced.

“Some companies go too far and end up with an overbroad restriction which fails in court, when they could spend limited funds to create or tighten their noncompetes and preserve major revenue pipelines,” says Seth Berenzweig, managing partner of the civil division at [WAlbo & Oblon LLP](#) in Arlington. “A relatively small investment in a solid noncompete today can help head off huge legal costs and problems later.”

One of the attorneys at the Rainmaker Roundtable stressed the importance of enforcing the noncompetes equally with everyone at the company.

It reminded me of a person I knew who accepted a sales-management job at a competitor and had a noncompete. The person had no fear of accepting the job because another person from her company was already working there in sales. However, her employer threatened to go to court to enforce the noncompete. She turned the tables and took the employer to court and won because the company was not evenly enforcing the noncompete agreement. She won enough money as a settlement to buy an oceanfront single-family home.

A company that doesn't want to use a noncompete agreement can help negate the importance of a salesperson's relationship with customers if more executives and managers have their own strong relationships with customers. That way customers get a chance to love the entire company, not just their salesperson, who thus will not be the only employee to get the customer's loyalty.

Would a true rainmaker ever sign a non-compete? I can see doing it if the agreement is extremely limited to current clients and specific contracts for one year.

For example, in federal contracting, there could be an agreement to not compete against the employer for renewals and re-competes of contracts that the person handled. Some companies offer something in return for signing a noncompete, such as more vacation time, additional bonuses or shorter periods between salary reviews.

I always say everything is up for negotiation. Make sure when you are asking your sales team to sign noncompetes that you know exactly what you are willing to give or

if you are standing firm and insisting everyone sign a noncompete. Have a good business attorney create or review the document.

The rock star rainmakers we all want to hire are usually great negotiators, and they probably have a few job offers when they are considering yours. Hopefully these factors can be balanced in a way that produces a positive result for both your company and your rainmakers.

Nancy McCarthy is president of D.C. Rainmakers, a coaching and consulting company. e-mail Nancymccarthy@dcrainmakers.com