

Be Careful When Using Liquidated Damages with Your Non-Compete Clause

A non-compete provision is different than most other contractual terms, because simply having mutual consent and consideration will not automatically render it enforceable for reasons of public policy, points out **an article** in The In-House Advisor by Shep Davidson of Burns & Levinson.

“While some businesses try to make an end-run around this law by requiring an employee to forfeit some benefit or pay liquidated damages if he/she competes against his/her company, any such requirement will be viewed through the same public policy lens used to scrutinize a formal non-compete provision,” he writes.

Davidson warns that, while a liquidated damages provision is not a silver bullet, if properly drafted, such a clause can be a significant deterrent to an employee who might otherwise decide to test the bounds of a non-compete.

Read the article.