

Hot legal/employment topics for the small business owner ©

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I. Employment Agreements

There are basically two types of employment agreements:

i) Employment agreements without restrictive covenants

* used to set forth job terms & conditions, salaries, termination events, etc.

* often may do as a simple “memorandum of employment”

ii) Employment agreements with restrictive covenants

* restrictive covenants can include, for example, covenants not to compete, nondisclosure covenants and non-solicitation (of employees or clients) covenants.

* Employment agreements with restrictive covenants are not easy to enforce in Georgia. The law is constantly changing (narrowing) in GA on enforceability, and they are less and less favored by the courts. They receive ‘strict scrutiny’ (except in connection with sale of business) and if any portion of a restrictive covenant provision is unenforceable, entire provision is void. **Key points:** geographic scope and time limit. Cannot limit competition of former employee except in both the specific job duties employee had (and most recent job duties), and geographic areas the employee actually and regularly worked in. As a general rule, time restraints should be from 6 months to no more than 2 or 3 years at most, depending on facts and particular circumstances. (Most common would be 12 to 18 months). Geographic scope even more tricky depending on the business: might be a county, several counties or a mileage radius from office where employee performed services. Statewide restrictions, or restrictions in locations where the company had no significant business at the time the contract was entered into (even if the company later expands into such areas) are nearly always unenforceable. An overly broad geographic limit or time restraint will effectively void the entire agreement!

* Non-solicitation covenants are the most tricky.