Non-Competition Agreements (2)

by M. E. Kabay, PhD, CISSP-ISSMP
Associate Professor, Information Assurance
Norwich University, Northfield VT

In my previous column, I introduced the issue of non-competition agreements (NCAs). In this follow-up article, I expand on pros and cons of these legal restrictions.

From the employer perspective, confidentiality agreements, NCAs and the other restrictive covenants serve to protect valuable intellectual property and to prevent damage to an organization’s reputation from disgruntled former (or even current) employees. On the other hand, excessively restrictive post-employment terms may discourage talented candidates from accepting employment in the first place. Perhaps listing a few specific firms is a reasonable compromise.

In addition, no employer should try to impose a _new_ non-compete clause on existing employees. Any such attempt could lead to resignations of key personnel or, if not that, tremendous resentment. Finally, employers should not try to trick employees into signing contracts with new NCAs; a case in the QuickMBA Web site <http://www.quickmba.com/law/empl/> describes a case where an employee was told that her old employment contract was missing from the files – would she please sign a new copy? She did, only to discover later that the “copy” included an entirely new NCA that prevented her from taking a nice new job with a competitor for an entire year.

From the employee perspective, these agreements or covenants pose a serious risk to future livelihood. Not being allowed to work in one’s field of expertise for even a single year could be a tremendous hardship. In contrast, agreeing not to work for any of a restricted list of direct competitors may be an acceptable trade-off in return for a signing bonus or even just for an employment opportunity. But above all, no one should sign such an agreement without consulting an attorney. The cost will be repaid many time over if one can avoid a disastrous period of unemployment. And if the potential employer puts pressure on the candidate – say, by refusing to allow a reasonable time for consideration of the terms of employment – I would walk away from the job offer immediately. I would not want to work for a firm that tried to bully people into signing employment agreements without appropriate legal advice.

One element that strikes me in these discussions is that there is an unhealthy asymmetry today in some managers’ attitudes toward employees. Some managers speak as if employees owe the organization loyalty and long-term commitments – yet at the same time, these same managers express strong support for the notion that organizations have no obligations whatever towards employees’ continued employment. Employees are to be hired and fired at will, as if human beings are interchangeable automatons who serve the short-term interests of the organization. Such a management philosophy ignores an alternative view: that an organization is a group of _people_ who have _relationships_ that profoundly influence long-term success of the organization.

From an information security perspective, anything that decreases the solidarity of the organization puts us at increased risk of harm. We know that disgruntled employees are a
significant source of damage to information systems.

We treat human beings as machines at our peril: dehumanizing each other and treating each other as tools instead of as colleagues and (at least potential) friends inevitably leads to the breakdown of all that is positive and healthy in any social grouping.

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M. E. Kabay, PhD, CISSP-ISSMP is Associate Professor in the Division of Business and Management at Norwich University in Northfield, VT. Mich can be reached by e-mail at <mailto:mkabay@norwich.edu>; Web site at <http://www.mekabay.com/index.htm>.

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