



TECHNICAL ASSISTANCE FOR EMPLOYERS

**Oregon Bureau of Labor and Industries
800 NE Oregon Street, Suite 1045, Portland, OR 97232**

NON-COMPETITION AGREEMENTS AND PROTECTION OF TRADE SECRETS

There is a natural tension between a departing employee's wish to begin a new career, and her ex-employer's desire not to have her suddenly work for a competitor. This tension becomes more pronounced when that competition is at least partially based upon trade secrets or other confidential information learned by the individual while she was employed at the former business.

While some states (e.g., California) ban non-competition agreements altogether, Oregon has traditionally taken a middle ground: non-competition agreements have not been enforceable unless they are made at the beginning of an individual's employment, or at the time the employee receives a bona fide advancement.

However, the 2007 Oregon legislature has made some major changes to the non-competition legal landscape. As of January 1, 2008, such agreements will not be enforceable unless:

- The employee is exempt from minimum wage and overtime as a "white collar" employee (i.e., he or she fits into either the executive, administrative or professional exemption),
- At termination, the employee's annual salary and commissions exceed the median family income for a family of four as determined by the U.S. Census Bureau (\$64,832 as of August 30, 2007),
- The employer has what is called a "protectable" interest. This means that the employee will have access to trade secrets or competitively sensitive confidential business or professional information - such as product development plans, product launch plans, marketing strategy or sales plans,
- The agreement is entered into at the beginning of employment (or bona fide advancement), and the employer has provided a written notice to the employee - at least two weeks before employment begins - that a non-competition agreement will be required, and
- The agreement is not effective for longer than two years from the date of the employee's termination.

Note: Special rules apply to "on-air talents" in the broadcast industry.

For more information about this and other important issues regarding Oregon employers, please visit our website at www.Oregon.gov/boli/ta. You may also call us at 971-673-0824.

The Technical Assistance for Employers unit offers employer seminars, handbooks, and other materials covering a number of topics. For additional information, visit our website at www.oregon.gov/boli/ta or call our Employer Assistance line.

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These materials were prepared as a general summary and teaching guide. The mission of the Technical Assistance for Employers Program is to promote compliance with civil rights and wage and hour laws through education. Technical Assistance does not provide legal advice. In order to determine the legality of any matter or to protect your legal rights, you should contact an attorney. Check the yellow pages of your telephone directory or contact the Oregon State Bar Lawyer Referral Service at 1-503-684-3763 OR 1-800-452-7636.

THIS INFORMATION IS AVAILABLE IN AN ALTERNATE FORMAT