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Colorado Non-Compete Agreements for Dentists

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JOSH AUSTIN

You may have heard rumblings about a proposed Federal Trade Commission (FTC) rule that would essentially ban most non-compete agreements nationwide. While this rule would dramatically alter the employment landscape, there are currently multiple legal challenges and a recent Supreme Court decision that make the future of this proposed rule uncertain. Unless and until the issue is sorted out at the federal level, each state's existing laws control. Therefore, it is crucial for Colorado dentists to understand our state's current laws regarding non-compete and non-solicitation agreements.



ABOUT THE AUTHOR

Josh Austin is an attorney with Mastin Bergstrom, LLC specializing in practice acquisitions, transitions, management, and related real estate matters (including commercial leasing and purchase and sale agreements), with particular emphasis on dental, veterinary, optometry and physical therapy businesses.

CURRENT COLORADO NON-COMPETE LAWS

Under current Colorado law, non-compete agreements are generally void for all employees unless they fall within specific exceptions. For dental practices, the most relevant exceptions are non-compete agreements given (1) in connection with the sale of the practice and (2) by "highly compensated workers" for the protection of trade secrets. The threshold for "highly compensated workers" is currently \$123,750, but this amount is subject to an annual adjustment. This means that if you have an associate dentist earning less than this amount, you cannot enforce a non-compete agreement against them.

Even for highly compensated workers, enforceable non-compete agreements must be for the purpose of protecting trade secrets and must be reasonable in scope. Gone are the days of blanket restrictions covering entire cities or counties of Colorado for an extended period of time. Instead, an enforceable non-compete agreement would need to be for a reasonable length of time and cover as small of a geographic area as necessary to protect the practice.

While these restrictions may present great limitations in an employment context, as mentioned, these limitations do not apply to non-compete agreements and non-solicitation agreements entered into as part of a sale of a practice. This is because Colorado has recognized that the buyer of a business has a significant interest in protecting the goodwill of the business through the use of non-compete and non-solicitation agreements.

PENALTIES FOR VIOLATIONS

Now that we have outlined the requirements of Colorado's current non-compete laws, let us talk about the potential consequences of attempting to present or enforce an invalid non-compete agreement. Under current law, if an employer presents, enters into, or tries to enforce a non-compete agreement that is void under Colorado's non-compete laws, the employer may be fined up to \$5,000.00, plus any actual damages incurred by the employee or potential employee; and yes, the current law applies to both employees and prospective hires too. With this in mind, it is crucial practice owners take the time to ensure their employment agreements are fully in line with Colorado law before presenting them to any dentist or other employee, current or prospective.

UPDATES TO NON-SOLICITATION AGREEMENTS

When it comes to non-solicitation agreements, which prevent former employees from soliciting your patients or staff, similar restrictions apply. Similar to covenants not to compete, non-solicitation agreements are only valid if they were entered into by a worker who is compensated at a certain level or above and for the purpose of protecting the practice's trade secrets. The one difference being that the income threshold for non-solicitation agreements is only 60% of the "highly compensated worker" threshold – so about \$74,240 for 2024. As such, practices may require dental hygienists and other staff members to enter into non-solicitation agreements, as long as they meet this income requirement.

In sum, while the future of the FTC's rule is unknown and that is unlikely to change any time soon, it is important to stay aware of the ongoing legal challenges against it. In the meantime, practices should focus on ensuring their non-compete and non-solicitation agreements meet all of Colorado's requirements. ■