



Companies Moving to Fla.: Take Advantage of Employer-Friendly Info Protections

<https://melandbudwick.com/2021/03/09/companies-moving-to-fla-take-advantage-of-employer-friendly-info-protections/>

Eric Ostroff

Florida is an increasingly attractive location for companies and individuals relocating during the pandemic. Beyond its favorable weather and tax environment, Florida has one of the country's most employer-friendly legal frameworks for protecting information assets. Companies that are new to Florida should consider how to best take advantage of these laws to protect their proprietary information.

Information assets like trade secrets are the lifeblood of the U.S. economy. Indeed, economists estimate that over 75% of the value of the U.S. economy value comes from intangible information assets. And although the news media focuses most of its attention on hackers and foreign bad actors, in reality it is malicious insiders—such as company employees, vendors, or business partners—who often present the greatest threat.

Agreements are commonly a company's front-line protection against malicious insiders. And Florida has one of the most employer-friendly non-compete/non-solicitation statutes in the country. In contrast, these restrictive covenants are almost entirely prohibited in California. And in New York, they are more difficult to enforce. Businesses moving from states with more employee-friendly statutes should evaluate whether to take advantage of Florida's favorable laws to implement agreements for employees with access to proprietary information. For example, as companies with substantial information assets to protect, such as companies in the technology and financial services sectors, relocate to Florida, many could be better protected by implementing non-compete/non-solicitation agreements.

Based on my experience developing restrictive covenants for all types of companies doing business in Florida, here is some general guidance:

- At the outset, it is important to understand whether non-compete/non-



solicitation agreements are right for your company. This includes making a philosophical decision about whether to use these types of agreements, keeping in mind the company's particular corporate culture. At a minimum, however, employees should typically sign an agreement that contains nondisclosure obligations.

- If you decide to move forward with updating existing agreements or developing new ones, a sound next step is to identify your critical information assets and have a lawyer conduct a trade-secrets audit. This will help identify those employees who should sign restrictive covenants based on their access to this information.
- Even if you decide not to implement non-compete or non-solicitation agreements, it may make sense to revise agreements to have Florida law apply and to select Florida as the venue for enforcement.
- You can then work with a Florida attorney to craft appropriate agreements for these employees. Importantly, care must be given to the manner in which any new restrictions are announced to the workforce so as to minimize the impact on employee morale.

At the same time, the Biden administration has announced its support for nationwide restrictions on restrictive covenants, an idea with bipartisan backing. But it is unclear whether any proposed restrictions will apply retroactively. Thus, there may only be a narrow window to implement restrictive covenants in advance of new federal restrictions.

Companies relocating to Florida should work with a lawyer who specializes in this area to determine how the state's employer-friendly statutes may be applied to help ensure they have the best-possible protections in place for their proprietary assets.

Eric Ostroff, managing partner and co-chair of Meland Budwick's trade secrets and IP group, may be reached at eostroff@melandbudwick.com.