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Navigating Noncompetes: Don't Retreat to the Doghouse

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Your pet products business is growing fast. You need to hire more talent. You finally find your perfect candidate. Recruiting is well under way. The individual is a perfect fit. Things are looking good.

AND THEN.

Your candidate tells you that she isn't sure if she can work for your company, because she signed a noncompete agreement with her current employer. Is there anything you can do?

There might be. Here are some things to know about hiring employees who are subject to noncompetes.

1. **Many noncompete agreements are unenforceable**. Noncompete agreements are subject to state laws. If they are permissible, they typically have to be drafted very carefully, with strict limits on the employee's restricted activities and the amount of time and geographic area in which they apply. Your first step is to get legal advice as to whether the agreement is potentially enforceable.
2. **Even if the agreement is enforceable, it may be possible to structure an employee's job responsibilities around the restrictions of the noncompete**. It is possible an employee can work for your company without causing damage to the former employer. Think about what the employee's job responsibilities will be and whether it is possible to avoid running afoul of his or her restrictions.
3. **Job descriptions matter**. It is important to document your new employee's duties to help demonstrate that her job responsibilities do not conflict with her noncompete agreement.
4. **Employment agreements can mitigate your risk**. A good employment agreement will document that you have instructed your new employee not to share confidential information of a former employer and not to engage in activities that are prohibited by a former noncompete agreement.

Noncompete agreements can be tricky to navigate, but you shouldn't retreat to the doghouse too quickly. You may be able to find a way to get to a yes after all.

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