[Or. Rev. Stat. § 653.295.]

§ 653.295. Noncompetition agreements; bonus restriction agreements; applicability of restrictions: Minimum Wages; Employment Conditions

(1) A noncompetition agreement entered into between an employer and employee is voidable and may not be enforced by a court of this state unless:

(a)(A) The employer informs the employee in a written employment offer received by the employee at least two weeks before the first day of the employee's employment that a noncompetition agreement is required as a condition of employment; or

(B) The noncompetition agreement is entered into upon a subsequent bona fide advancement of the employee by the employer;

(b) The employee is a person described in ORS 653.020 (3);

(c) The employer has a protectable interest. As used in this paragraph, an employer has a protectable interest when the employee:

(A) Has access to trade secrets, as that term is defined in ORS 646.461;

(B) Has access to competitively sensitive confidential business or professional information that otherwise would not qualify as a trade secret, including product development plans, product launch plans, marketing strategy or sales plans; or

(C) Is employed as an on-air talent by an employer in the business of broadcasting and the employer:

(i) In the year preceding the termination of the employee's employment, expended resources equal to or exceeding 10 percent of the employee's annual salary to develop, improve, train or publicly promote the employee, provided that the resources expended by the employer were expended on media that the employer does not own or control; and

(ii) Provides the employee, for the time the employee is restricted from working, the greater of compensation equal to at least 50 percent of the employee's annual gross base salary and commissions at the time of the employee's termination or 50 percent of the median family income for a four-person family, as determined by the United States Census Bureau for the most recent year available at the time of the employee's termination;

(d) The total amount of the employee's annual gross salary and commissions, calculated on an annual basis, at the time of the employee's termination exceeds the median family income for a four-person family, as determined by the United States Census Bureau for the most recent year available at the time of the employee's termination. This paragraph does not apply to an employee described in paragraph (c)(C) of this subsection; and

(e) Within 30 days after the date of the termination of the employee's employment, the employer provides a signed, written copy of the terms of the noncompetition agreement to the employee.

© 2018-2019 The SLIHCQ Database

(2) The term of a noncompetition agreement may not exceed 18 months from the date of the employee's termination. The remainder of a term of a noncompetition agreement in excess of 18 months is voidable and may not be enforced by a court of this state.

(3) Subsections (1) and (2) of this section apply only to noncompetition agreements made in the context of an employment relationship or contract and not otherwise.

(4) Subsections (1) and (2) of this section do not apply to:

(a) Bonus restriction agreements, which are lawful agreements that may be enforced by the courts in this state; or

(b) A covenant not to solicit employees of the employer or solicit or transact business with customers of the employer.

(5) Nothing in this section restricts the right of any person to protect trade secrets or other proprietary information by injunction or any other lawful means under other applicable laws.

(6) Notwithstanding subsection (1)(b) and (d) of this section, a noncompetition agreement is enforceable for the full term of the agreement, for up to 18 months, if the employer provides the employee, for the time the employee is restricted from working, the greater of:

(a) Compensation equal to at least 50 percent of the employee's annual gross base salary and commissions at the time of the employee's termination; or

(b) Fifty percent of the median family income for a four-person family, as determined by the United States Census Bureau for the most recent year available at the time of the employee's termination.

(7) As used in this section:

(a) "Bonus restriction agreement" means an agreement, written or oral, express or implied, between an employer and employee under which:

(A) Competition by the employee with the employer is limited or restrained after termination of employment, but the restraint is limited to a period of time, a geographic area and specified activities, all of which are reasonable in relation to the services described in subparagraph (B) of this paragraph;

(B) The services performed by the employee pursuant to the agreement include substantial involvement in management of the employer's business, personal contact with customers, knowledge of customer requirements related to the employer's business or knowledge of trade secrets or other proprietary information of the employer; and

(C) The penalty imposed on the employee for competition against the employer is limited to forfeiture of profit sharing or other bonus compensation that has not yet been paid to the employee.

© 2018-2019 The SLIHCQ Database

(b) "Broadcasting" means the activity of transmitting of any one-way electronic signal by radio waves, microwaves, wires, coaxial cables, wave guides or other conduits of communications.

(c) "Employee" and "employer" have the meanings given those terms in ORS 652.310.

(d) "Noncompetition agreement" means an agreement, written or oral, express or implied, between an employer and employee under which the employee agrees that the employee, either alone or as an employee of another person, will not compete with the employer in providing products, processes or services that are similar to the employer's products, processes or services for a period of time or within a specified geographic area after termination of employment.

[1977 c.646 §2; 1983 c.828 §1; 1985 c.565 §85; 2005 c.22 §459; 2007 c.902 §2; 2015 c.429 §1; 2019 c.121 §1]

© 2018-2019 The SLIHCQ Database