



# Fine Print

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## DEALING WITH YOUR INSURANCE COMPANY

By W. Kelly Lundrigan

If you are a business owner, there are some things you should know when buying insurance coverage and when dealing with claims. As an attorney, I sometimes have clients who, when disaster strikes, regret not having paid more attention to their insurance coverage. Decisions about what kind and what amount of coverage to buy are some of the most critical you will make as business owner. By law, insurance policies must be written in clear and unambiguous language. If something in the policy does not make sense to you, then you should question it. As the insured, you need to understand what you are buying - what the policy will cover and any exclusions or limitations to it.

The type of business you operate and any inherent hazards it presents to your employees or others, the number of employees you have, the amount of real and personal property involved with the business, where its operations are carried out and other factors determine what types and amounts of insurance coverage you should have. You may need "specialized" insurance due to a certain risk posed by your operations, or you may need an "occurrence" policy,

which extends the length of time the coverage may be effective, rather than a "claims made" policy, which limits the coverage to being triggered only during a definite time period.

When making insurance buying decisions, choose an insurance agent who is familiar with your business's operations and the extent of the property it owns. Having a long-term relationship with a knowledgeable and trustworthy agent is important, since this relationship will be ongoing. You will need to review your coverage at least once a year and provide information about any changes in your business such as the number of employees and the property owned by the business.

Talk to members of your local chamber of commerce and other business owners to get the names of insurance agents they use.

All insurance policies are not the same, either in price or in coverage. There may be different coverage language and exclusions even in the policies

of insurers purporting to cover the same matters. Your agent should understand and be able to explain these differences in a detailed written package comparing alternatives. You should also consider having your attorney review the coverage you plan to buy.

After deciding what type of insurance to buy, you can hope it will never

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## PROTECT YOUR INTERESTS WITH NON-COMPETITION AGREEMENTS

By Neil Klingshirn

Employees today are ready, able and willing to leave your job for one with your competitor, who may even have recruited them. Small business owners are particularly vulnerable to "employee raiding" by larger competitors.

To protect their investment in employees, small business owners increasingly turn to non-competition agreements. Through such agreements, employees agree not to compete with their employers for specified periods of time in particular locations. For example, an employee may agree not to compete with a Columbus-based employer while employed and for one year following employment within a five-mile radius of downtown Columbus.

**Q:** Are non-competition agreements enforceable?

**A:** Courts generally will enforce non-competition agreements if:

- the employer proves it has a legitimate business interest to protect;
- the employee's right to compete is restricted only enough to protect the employer's business interest;
- the employer gave the employee something in exchange for the non-competition agreement; and
- the agreement does not injure the public.

Most courts will enforce a non-

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competition agreement for a year or two in the same geographical area that the employee worked.

*CAVEAT: If you do business outside Ohio, some other states refuse to enforce such covenants.*

**Q:** What are some examples of an employer's legitimate business interests?

**A:** An employer can legitimately prevent an employee from taking advantage of relationships or information acquired as a result of the employment. If an employer gives a new employee its customer list, for example, the employer can enforce an agreement preventing the employee from contacting those customers on behalf of a competing business.

**Q:** Must I give my employees anything in return for signing non-competition agreements?

**A:** Yes. To enforce such a contract, you should provide a modest signing bonus. Some courts require more. Therefore, you may wish to wait until you are ready to adjust the employees' pay to ask for the agreements. Your employees could choose, then, to sign the agreement or forego a raise.

**Q:** How can a non-competition agreement injure the public?

**A:** The public may be harmed if there is an undersupply of the service your employee provides. For example, a physician's group cannot prevent a doctor it employs from treating patients who might not otherwise receive medical help due to a shortage of doctors.

**Q:** What if my employees refuse to sign?

**A:** You might consider hiring other employees. You must weigh the risk that an employee might use information to compete against you against the cost of hiring a new employee. If the risk of competition is too great, ask all future employees to sign the agreement as a condition of their continued employment. Ohio law allows you to fire or refuse to hire an

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be used. But if you are like most business owners, you probably will have a claim sooner or later. The claim may take the form of a lawsuit against your company. If the claim involves a lawsuit, tell your attorney immediately. Let your attorney submit the lawsuit to your insurance carrier. This should be done immediately and by means of a letter. Your attorney will know how to demand action from the insurer under the applicable policy language.

Usually, insurance policies require the insurer to choose and pay for an attorney to defend the lawsuit, although sometimes the policy may allow you to select the attorney. Once an attorney has been selected, you may get what is called a "reservation of rights" notice from your insurance carrier. This means the insurer will pay for the defense of the lawsuit, but reserves the right to refuse to pay for any judgment, which might be entered

employee who does not sign a non-competition agreement.

**Q:** I need to terminate an employee who I have reason to believe might compete against me. Can I get a non-competition agreement from that employee before the termination?

**A:** Yes, if the employee agrees and you provide something of value for it, such as severance benefits. However, such an individual is in a very good bargaining position and may demand more than you are able or willing to pay.

**Q:** Is there any other way I can protect myself if I do not have non-competition agreements with my employees?

**A:** Yes. Ohio prohibits employees from misappropriating "trade secrets" from former or current employers. Examples

against you. Usually reservation of rights letters arise when the lawsuit alleges some claims that may be covered by the policy and others that may not be covered.

Be aware that the interests of your company and your insurance carrier differ in this situation. Although your insurer may appoint counsel to represent you, that lawyer will probably be one who has an ongoing relationship with, and receives lots of work from,

the insurance carrier. Particularly if the stakes are high, you may wish to have separate counsel for your company, at least to monitor the legal proceedings. Your company must pay the additional costs for this, but your company's rights will be protected.

Your insurance coverage is important to your business's survival. Give it the attention and consideration it deserves.

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*W. Kelly Lundrigan is an attorney with the Dayton firm of Coolidge Wall Womsley & Lombard.*

of trade secrets include confidential customer lists and pricing information and secret formulas and methods. Keeping trade secrets as "secret" as possible and preventing employees from misusing confidential information may effectively limit their ability to compete against you.

**Q:** Can I do anything to stop another employer from hiring my employee to compete against me?

**A:** Yes. If the other employer knowingly causes the employee to breach a non-competition agreement, you can sue the new employer for unlawful interference with the non-competition agreement between you and your former employee.

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*Neil Klingshirm is a partner in the Akron-based law firm of Fortney & Klingshirm.*

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