

PRESENTATION

**Best Your Competition With Restrictive  
Covenants: Using Noncompetes, Nonsolicitation  
Covenants, and Confidentiality Agreements as  
Effective Weapons**

**Presented by Larry Eastwood and Michael Ewing**

**BAKER DONELSON**

EXPAND YOUR EXPECTATIONS™

---

I want everyone to walk out of here with an improved plan for:

- Hiring candidates who've signed restrictive covenants
- Protecting yourself against poaching

# Terminology

---

Best Your Competition With **Restrictive Covenants**: Using Noncompetes, Nonsolicitation Covenants, and Confidentiality Agreements as Effective Weapons

# Varieties of Restrictive Covenants:

---

- Noncompete covenants
- Customer nonsolicitation covenants
- Employee nonsolicitation covenants
- Nondisclosure and confidentiality covenants

# Terminology

---

**Best your Competition** With Restrictive Covenants: Using Noncompetes, Nonsolicitation Covenants, and Confidentiality Agreements as **Effective Weapons**



---

# Part One: Hiring Candidates Who Have Signed Restrictive Covenants

# Hiring Candidates Who Have Signed Restrictive Covenants

---

## Best Practices:

- Step 1: Ask each serious candidate if they've signed a restrictive covenant.
- Step 2: Obtain a copy of the covenant.
- Step 3: Have your attorney review it to assess its scope and enforceability.
- Step 4: Determine whether you can safely hire the employee and what the risks are.

# Hiring Candidates Who Have Signed Restrictive Covenants (continued)

---

## Best Practices:

- Step 5: Determine whether the candidate is worth the risk.
- Step 6: Consider whether to sideline the candidate or restrict his or her activities.
- Step 7: Give written instructions to the new employee, and, as appropriate, to his or her bosses.
- Step 8: Consider whether to preemptively reach out to the current or former employer.
- Step 9: Consider whether and when to obtain sworn statements.



---

Step 1: Ask each serious candidate if they've signed a restrictive covenant.

---

Step 2: Obtain a copy of the covenant.

---

**Step 3: Have your attorney review it to assess its scope and enforceability.**

---

**Step 4: Determine whether you can safely hire the employee and what the risks are.**

---

**Step 5: Determine whether the candidate is  
worth the risk.**

---

**Step 6: Consider whether to sideline the candidate or restrict his or her activities.**

---

**Step 7: Give written instructions to the new employee, and, as appropriate, to his or her bosses.**

---

Step 8: Consider whether to preemptively reach out to the current or former employer.



---

## Step 9: Consider whether and when to obtain sworn statements.

---

# Review of a Sample Restrictive Covenant

---

# Part Two: Protecting Yourself Against Poaching

## Review: Varieties of Restrictive Covenants:

---

- Noncompete covenants
- Customer nonsolicitation covenants
- Employee nonsolicitation covenants
- Nondisclosure and confidentiality covenants

# Protecting Yourself Against Poaching

---

## Best Practices:

- Step 1: Determine what needs to be protected, and from whom.
- Step 2: Limit access to your confidential information.
- Step 3: Determine, with your attorney, the type and scope of covenants to use with each employee.

## Protecting Yourself Against Poaching (continued)

---

### Best Practices:

- Step 4: Store the signed agreements somewhere safe.
- Step 5: Remind departing employees about their restrictive covenants.
- Step 6: Make good use of demand letters prior to litigation.
- Step 7: Try to maintain a consistent approach to enforcing your restrictive covenants.

---

Step 1: Determine what needs to be protected, and from whom.

---

## Step 2: Limit access to your confidential information.



---

**Step 3: Determine, with your attorney, the type and scope of covenants to use with each employee.**

## Considerations:

---

- Consider which employees really need noncompetes or nonsolicitation covenants.
- Consider whether a nonsolicitation covenant or NDA will work just as well as a noncompete.
- Consider whether a confidentiality covenant alone will be sufficient.
- Consider what state law is likely to apply/be enforced.
- Deterrent effect versus enforcement.
- Consider your options regarding attorney fee shifting provisions.

---

**Step 4: Store the signed agreements  
somewhere safe.**

---

**Step 5: Remind departing employees about their restrictive covenants.**

---

## Step 6: Make good use of demand letters prior to litigation.

---

**Step 7: Try to maintain a consistent approach to enforcing your restrictive covenants.**

## Review of Today's Objectives:

---

- Develop an improved plan for hiring candidates who've signed restrictive covenants.
- Develop an improved plan for protecting against poaching