Believe: Tennessee Changes the Playbook on Noncompetes

What Employers, Businesses and their CPAs need to Know about Tennessee's New Restrictive Covenant Framework



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When the Rules Change, Great Teams Adapt

- Understand Tennessee's new noncompete framework
- Identify Employees most affected
- Evaluate Compensation-Threshold Issues
- Recognize Transaction and Valuation Impacts
- Develop Client Advisory Recommendations



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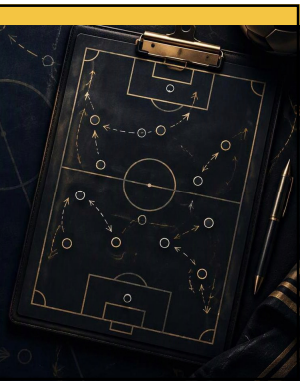
Why should CPAs Care?

- Business Operations
- Workforce Planning
- Compensation Design
- M&A Transactions
- Business Valuations
- Risk Management



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A good playbook evolves



Successful employers do not rely on a single restrictive covenant.

They build systems.

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Legislative History

When the Rules Change, Great Teams Adapt



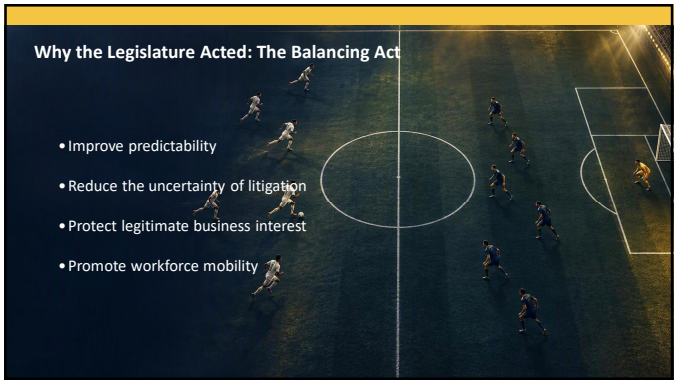
Noncompetes before Public Chapter 934

COMMON LAW

- Supported by Consideration
- Reasonable Time
- Reasonable Geographic Territory
- Legitimate Business Interest
- Not Against Public Policy

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Why the Legislature Acted: The Balancing Act



- Improve predictability
- Reduce the uncertainty of litigation
- Protect legitimate business interest
- Promote workforce mobility

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Every Great Team Starts by Understanding the Rules of the Game

What is a noncompete?



Common Law

- A written agreement
- Prohibiting or limiting a person's ability to
  - Work in a certain industry
  - Engage in competing work in a certain area
  - Work for a competitor
  - Open a competing business

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Every Great Team Starts by Understanding the Rules of the Game

What is a noncompete in the Statute?



What is NOT a noncompete?

- A Confidentiality Agreement / NDA
- A Client or Customer Nonsolicitation Agreement
- An Employee Nonsolicitation Agreement

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What changed?

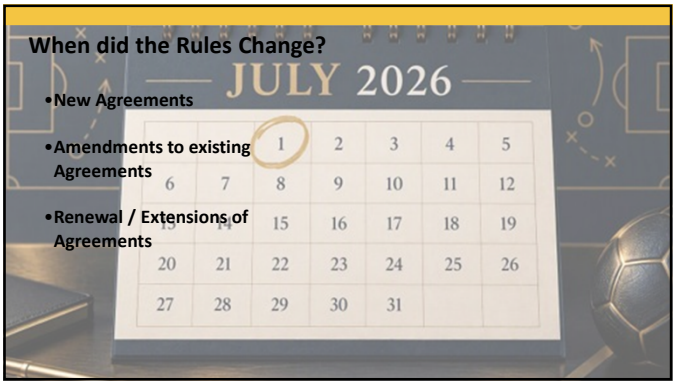
- Statutory presumptions for Courts to apply
- Salary Threshold
- Editorial Authority



Be curious, not judgmental.

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When did the Rules Change?



- **New Agreements**
- **Amendments to existing Agreements**
- **Renewal / Extensions of Agreements**

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The Statutory Hat Trick – Rebuttable Presumptions

- Employees and Independent Contractors



Business Relationships





Mergers and Acquisitions

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Employees: the $70,000 Threshold

NOT A REBUTTABLE PRESUMPTION

"void and unenforceable as a matter of public policy"



Determined by "Annualized Compensation"

- • Total Compensation
  - Hourly Wages / Salary
  - Commission
  - Non-discretionary bonuses
  - "Other forms of remuneration"
- Hourly?
  - (Hourly wage x 40) x 52

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Rebuttable Presumption for Employees & Independent Contractors:

Up to 2 years presumed reasonable

- Longer than 2 years from the termination of employment / contractor relationship presumed unreasonable



- But . . . does not apply if the non-compete is in conjunction with an equity award or right to receive profits

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Rebuttable Presumption for Business Relationships

Customer Relationship / Goodwill Protection



Distributor, Dealer, Franchisee, Lessee of Real or Personal Property, Licensee of Trademark, Trade Dress or Service Mark

NEW CATEGORY ALERT

Up to **3** years presumed reasonable

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Rebuttable Presumption for M&A Transactions

Goodwill Protection

Longer of 5 years OR

The period payments are being made to the seller

- Goodwill
- Relationships
- Purchase Price



- Asset Purchase
- Equity Purchase
- Any other equity purchase OR right to receive profits

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What Still Works?

Fundamentals still win games.

- ☑ Confidentiality Agreements
- ☑ Trade Secret Protection
- ☑ Customer Non-Solicitation
- ☑ Employee Non-Solicitation



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Trade Secret Protection

Protect confidential information

- Access controls
- Password protections
- Confidentiality policies
- Employee training



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Implications for Compensation Planning

Executive and Incentive planning

- Executive compensation design
- Retention bonuses
- Deferred compensation
- Equity incentive planning
- Onboarding Process

- Action Items:
  - Get your attorney to review your forms!
    - Offer letters, employment agreements, Equity Awards, SARS, PIU Awards, Phantom Unit Awards, etc.



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Employer Audit Roadmap

A proud peacock today is a feather duster tomorrow.

- **Five-Step Game Plan**
  - Review agreements
  - Identify covered employees
  - Review compensation
  - Update templates
  - Train leadership
- HR & Payroll
  - Track compensation accurately!



- $70,000 “Annualized Compensation” Threshold– NOT A SUGGESTION

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Standard Forms

Be a Goldfish (for now)



- Independent Contract Agreements
- Franchise Agreements
- Distribution Agreements
- Dealer Agreements

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M&A Implications

Time to Update the Due Diligence Checklist!

- What documents contain restrictive covenants?
- When were they executed?
- Do the employees meet the salary threshold?
- Are the agreements compliant?



Time to Update the FORMS!

- Are key employees protected?
- How is goodwill protected?

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Valuation Issues

Enterprise value considerations



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Don't Get Caught Offside

The team that makes the fewest mistakes wins

Common Mistakes

- ✗ Using outdated templates
- ✗ Ignoring threshold requirements
- ✗ Overly broad restrictions
- ✗ Weak confidentiality protections
- ✗ Lack of documentation



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Championship Strategy

Build layered protections

- The strongest organizations don't rely on one play.

They build:

- Strong hiring practices
- Effective compensation programs
- Trade-secret protections
- Reasonable restrictive covenants
- A culture that retains talent



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"If they were curious, they would have asked questions."



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