



**CLIENT ALERT**  
**AUGUST 31, 2011**

## **THE PERILS OF RESTRICTIVE COVENANTS**

Employers in all industries have an inherent interest in protecting their valuable proprietary information, trade secrets and client information. This is especially true with regards to sales representatives and/or executive level employees who have access to the foregoing and could potentially take confidential information with them to a competitor, resulting in irreparable damage and loss. Employers desiring to protect themselves typically turn to standard and overly broad non-compete, non-solicitation or confidentiality agreements (collectively "Restrictive Covenants"). However, New York courts are quick to strike any Restrictive Covenants which are inequitable and not narrowly or specifically tailored to protect an employer in each instance.

Whether courts will find a particular Restrictive Covenant enforceable will depend on several factors. The general rule is that Restrictive Covenants are enforceable if reasonable as to time, scope and geographical limitation necessary to protect the legitimate business interests of the employer and do not impose undue hardship on the former employee. The unique and specific skills of the particular employee must also be taken into account. If a Restrictive Covenant is so unfair or overly restrictive, a court will declare it contrary to public policy and legally unenforceable. For example, in the restaurant industry, a Restrictive Covenant preventing a waiter from working in any other restaurant within a fifty (50) mile radius for a period of two (2) years is unlikely to be enforceable; but similar terms for a celebrity chef who could take his unique skills, recipes and fame to a competitor a few miles away, might be enforceable.

The New York courts' disdain for overly broad Restrictive Covenant was once again highlighted in a recent Civil Court decision, *Eyes of the World v. Boci*, wherein the court held that a Restrictive Covenant preventing a former salon employee from providing competing salon services in New York City to any of its clients with whom the employee provided services during her last year of employment was overly restrictive. Although the employee voluntarily resigned and went to work for a competitor, the court found that the Restrictive Covenant was "unreasonable in its limitation, burdensome to the employee, and not necessary to protect the employer's legitimate interests" because the employee did not provide "unique or extraordinary" services. As a result, the court held the restrictive covenant to be unenforceable.

Accordingly, Restrictive Covenants must be carefully drafted for each and every type of employee, with careful consideration given to the particular employee, industry and locale involved. An employer should also have a strong sense on what they actually need to prevent the former employee from doing (working for a competitor, contacting previous clients, disparaging the employer, soliciting current employees to leave, etc.).

Our firm routinely counsels and represents employers engaged in a wide range of industries including fashion, manufacturing and software, among others, in connection with employment practices. In particular, we have extensive training in drafting restrictive covenants and employment manuals to adequately protect a company's interests. If you have any questions about the matters covered in this Client Alert, or wish to schedule a private consultation, please call Terrence A. Oved, Esq. of Oved & Oved LLP by telephone at 212.226.2376 or contact by email at [terry@ovedlaw.com](mailto:terry@ovedlaw.com).

**OVED & OVED LLP**  
**101 AVENUE OF THE AMERICAS**  
**15TH FLOOR**  
**NEW YORK, NY 10013**  
**TEL: 212.226.2376**  
**FAX: 212.226.7555**

[www.ovedlaw.com](http://www.ovedlaw.com)

This Client Alert is a source of general information for clients and friends of Oved & Oved LLP. Its content should not be construed as legal advice, a comprehensive summary of recent developments in the law, or an exhaustive treatment of the subject(s) covered. Readers should not act upon the information in this Client Alert without consulting counsel. Attorney advertising, prior results do not guarantee a similar outcome.

© 2011 OVED & OVED LLP.  
All rights reserved.

