

Effect of Mergers and/or Acquisitions on Employee Non-Competition Agreements

Author: W. Walton Kitchin, Attorney at Law

There are many factors to consider when electing the form under which the purchase of an existing business takes place. It would appear from relatively new cases in North Carolina that the format of the sale of a business will impact the enforceability of existing employee non-competition agreements or covenants not to compete. When deciding whether to purchase the stock or the assets of a particular business the acquiring company might need to consider the existing employee agreements. When assets are acquired by a sale and non-compete agreements are scheduled as such assets, the company acquiring these assets may enforce the non-competition agreements for the agreed upon limitations period only from the date of the sale, not from the employee's later termination.

On the other hand, if a business is bought as a result of a sale of its stock then arguably the non-competition agreements with its current employees are assigned to the new owner and are enforceable as if they had been entered into originally by the buyer and employees. If the subject employee or employees are valuable the new employer should give thought to negotiating new agreements with new time restrictions.