

HOT SHEET

Volume 11, Issue 7
August 28, 2024



Full-Circle HR

HR Trends:

- WA Senate Bill 5793 to take effect 1/1/2025 allows use of State sick time for daycare or school closures due to health reasons or emergencies.
- If approved, the bipartisan Employer Participation in Repayment Act will permanently enable employers to voluntarily provide up to \$5,250 annual tax-free student loan repayment educational assistance under Section 127 of the Internal Revenue Code.
- According to a survey of almost 6,000 employees by Bentley University, 62% believe businesses should refrain from taking public stances on political issues. They further found that employees are weary of political expression in the workplace.
- Employers are finding that new graduates need support in understanding work expectations. One example is Zoom etiquette—such as appropriate backdrops, turning the camera on, being timely, and avoiding interruptions from pets and people in the environment.
- In SHRM's 2024 benefits survey, the list of benefits employers are offering to their employees increased by 23%, some include menopause support and grandparent leave.

Non-Compete Agreements

A blanket FTC ban on non-compete agreements (except in certain situations and for those covering senior executives) was slated to take effect on September 4, 2024. However, it has been blocked by a Federal Court in Texas due to its failure to consider less restrictive measures. Nevertheless, many states have bans or other restrictions on non-complete agreements. Before deciding to implement one, research your state's position on this practice.

Non-compete agreements have drawn some fire for many years now. If they are overly vague or broad and unreasonable, they can be seen as preventing a person

from making a living in the field in which they are trained and experienced. This is why many states and courts have chosen to limit their use and/or terms.

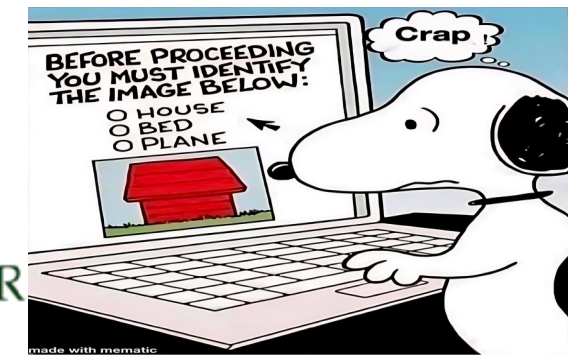
The purpose of a non-compete agreement is to protect a company's market share and trade secrets. It is a contract between the business and the employee or contractor that prevents them from unfairly competing with the company after they are no longer working with it or after they sell the company. It can protect confidential information including customer lists and it can give a company legal recourse in the event of someone engaging in unfair competition.*

Choosing Other Options in Lieu of Termination

Separating an employee should never be taken lightly. The employment relationship likely began in good faith between you and your employee and each of you has come to count on the other. When it comes time to part ways, it is important to remember that it is the relationship that is not working. It is not a character judgement of the two parties. That doesn't mean that each does not have something to learn from the situation and then moving on. In my career, I have handled many terminations for many reasons including layoffs, failed drug tests, a mismatch in skill, addiction issues that have made the relationship untenable, threats of violence, failure to meet performance standards, and

more. One of our most challenging things to do is separate gracefully and humanely. I don't remember anyone teaching me about healthy separation when I was growing up. I can't remember a time when it was not uncomfortable and downright painful to do. I think this is likely true for most people. Yet, it can be done with kindness, respect, lack of judgment, and with consideration for the human in front of you.

When you find you are considering termination, consider opening the options to creative thinking. Forbes offers many of these** in addition to implementing a performance improvement plan or transferring the employee to another role or department. Some additional



By signing, workers agree not to compete with you for a set amount of time or within a specific geographical area. While they're working for you, and after they leave, the agreement deters them from taking a job or starting a business where they can gain a competitive advantage against your company.

If you think that a non-compete agreement might be of use to your company, here are some things to consider that are recommended by Law Depot:
• **Make sure the restrictions are reasonable.** The scope and duration of the restrictions should be fair and reasonable.
• **Consider the industry.** Businesses in fields

where tight competition and trade secrets are the norm are more likely to need Non-Compete Agreements. • **Offer consideration.** In exchange for signing the contract, the other party could receive an increased payment or some other perk.
• **Avoid ambiguity.** Be specific about what activities are prohibited, as broad clauses are less likely to hold up in court.
• **Make sure the agreement is necessary.** If there is no exchange of sensitive information, a Non-Compete Agreement might be unnecessary. These have traditionally been the recommendations for employee agreements as well as those outside of employment.

Life is not a problem to be solved, but a reality to be experienced.

— Soren Kierkegaard

ones are: • Initiate a mentorship program. Solid coaching that models the behavior that you seek can transform the situation and set the employee up for success. • Try to understand the employee's perspective. Has there been a change in value alignment with the role? Communication may help you avoid employee turnover and turn the employee around. • Coach instead of reprimand. Even if you do end at termination, creating an amicable relationship and making a good faith effort to help the employee succeed is likely to make termination go more smoothly. • Consider hybrid work, work schedule adjustment, or a leave of absence. If termination is ultimately what make the most sense

for the situation, another consideration is resignation in lieu of termination.[^] It can be an option if the offense is not egregious conduct, but rather something such as a value mismatch, a job mismatch (and no other job options available), and/or failure to meet performance standards. It can mitigate the chance of legal action against you. It can also help the employee with future job searches by not having to say they were terminated. This may or may not still allow for an unemployment claim. You can also combine this option with a separation agreement and have the process approved by your attorney.

* Lawdepot.com, <https://www.lawdepot.com/contracts/non-compete-agreement>, Byrknnes, Ingvall Walmann, May 29, 2024.

** Forbes.com, *15 Strategies to Try Before Terminating an Employee*, July 26, 2021.

[^]SHRM, *Ask HR: The Case for Resignation in Lieu of Termination*, Taylor, Johnny C. Jr., August 15, 2024.