

Non-Compete Agreements: Does it Matter Whether the Employer or the Employee Terminates the Relationship?



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Often this is not a large concern, but may be applicable in some situations. The first question to ask is *when was this non-compete agreement signed?*

In Arkansas, the watershed date is July 22, 2015, which is when a landmark non-compete statute came into play.

For non-competes signed after July 21, 2015, the Arkansas non-compete statute is silent on this issue. Absent some later court authority holding otherwise, of which to date there is none, in a purely legal sense this fact does not meaningfully inform the question of whether a non-compete agreement is enforceable. As a more practical observation, this is not the same thing as saying that this fact is irrelevant. In any matter that may ultimately be tried before a jury, one can expect jurors to view an employee differently depending which side of the employment ended the relationship.

For non-competes signed on or before July 21, 2015, there is some history for Arkansas courts weighing the issue of who terminated the employment relationship. *Andres v. Cogbill*, 1994 WL 318026, at *4-5 (Ark. Ct. App. June 29, 1994). Given that Arkansas courts have at times examined whether enforcing a non-compete agreement would severely restrict an employee's ability to earn a living, it is understandable that this factor may influence a court, but there is no firm rule to which we can point to as an absolute. See *Quality Liquid Feeds, Inc. v. Plunkett*, 199 S.W.3d 700, 707 (Ark. Ct. App. 2004)).

This article is part of the Mitchell Williams Non-Compete Agreement series explaining how non-compete agreements are interpreted and enforced. The series will be published weekly for a total of 7 articles.

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