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Will your non-competition agreements do what you think they'll do when you need them?

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Earlier this month, in *Sodexo Inc. v. Melissa Jordan*, a federal court in Massachusetts refused to enforce a non-competition agreement. That decision may be a harbinger of things to come in similar cases, as the economy struggles with COVID-19.

Sodexo is a large corporation that provides, among other things, food services and facilities management to universities. Ms. Jordan worked at Sodexo for nearly eighteen years. In 2016, she became Vice President of Business Development in Sodexo's Universities and Colleges division. At that time, she signed a non-competition agreement, which, for a period of 9 months following her departure from Sodexo, prevented her from **"being employed by ... any corporation, firm or other entity or person engaged in the Management Services Business including, without limitation"** certain named competitors of Sodexo.

Ms. Jordan left Sodexo in 2018 and started working for one of its competitors just over a month later. Sodexo sued her, claiming that her new job was in violation of her non-competition agreement. Ms. Jordan filed a motion seeking dismissal of the claim. Granting her motion, the court found that the non-competition agreement was overbroad as written because it was unrestricted to the line of business in which Ms. Jordan worked at Sodexo. If enforced as written, the court noted, the agreement would have prevented her from working for any Sodexo competitor, in any capacity, even as a janitor. Therefore, in the court's view, the non-competition agreement was unenforceable as a matter of law, just based on how it was written, because it went far beyond what was necessary to protect the good will that Ms. Jordan had cultivated for Sodexo in her most recent role there.

Importantly, it was immaterial to the court whether Ms. Jordan was, in fact, competing against Sodexo in the same line of business in which she worked when employed there, or that

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Sodexo would not have sought to enforce the agreement had she, in fact, taken a position as a janitor. The court simply rejected the non-competition agreement as written, declined to revise it to make it reasonable in scope, and that was the end of the story.

Consistent with the court's ruling in *Sodexo*, at least one commentator predicts increased reluctance by courts to enforce non-competition agreements in the coming months and possibly years. He notes that courts were generally less inclined to enforce such agreements—and more often than usual endeavored to find reasons not to enforce them—in the wake of the 2008 recession, when employment opportunities were limited. In light of the similar job market conditions occasioned by COVID-19, he anticipates recent and future layoffs prompting an uptick in people going to work for competitors of their prior employers, and he expects courts to become even more circumspect than usual about non-competition agreements, just as they did when the earlier recession hit more than a decade ago.

Only time will tell whether he is correct. Nevertheless, now may be a good time to review and improve your company's non-competition agreements and other restrictive covenants to enhance your chance of success if or when it comes time to enforce them. We can help!

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