

What's considered proper 'consideration' to make a valid noncompete agreement?

Q. I understand that consideration is required for noncompete restrictions in North Carolina and that—for existing employees—continued employment is not valid consideration. How much must a company pay to have sufficient consideration?

A. You are correct that employers must offer consideration (something of value) to an employee in exchange for a noncompete restriction. The consideration is often the payment of money.

In regard to how much is paid, North Carolina courts generally do not evaluate the adequacy of the consideration, but only determine whether consideration was actually given. In a recent Court of Appeals case, the court reaffirmed this principle, holding that a payment of \$500 constituted consideration for a covenant not to compete.

There are other types of consideration:

- Initial employment, if the noncompete is signed before employment starts
- Continued employment for a stipulated amount of time
- A raise, bonus, or other change in compensation
- A promotion, additional training, some other increase in responsibility or, for hourly employees, some increase in the number of hours worked.

The consideration must be new, separate from existing benefits and not illusory. Make sure you specifically set forth the consideration for the noncompete in a formal noncompete employment agreement.