

Is it risky to indemnify a candidate against violating a noncompete agreement?

Q. We want to hire someone who signed a noncompete agreement with his current employer. He asked us to indemnify him in the event his employer sues him. What are the legal risks associated with agreeing to indemnify him?

A. If the prospective employee signed an enforceable noncompete agreement with another employer and would violate it by accepting a job with you, three things could happen.

1. The former employer could sue the employee for violating the noncompete.
2. The former employer could also seek a temporary restraining order preventing him from working and seeking enforcement of the terms of the agreement.
3. The former employer could also sue your company.

If you agree to indemnify him, this typically means that you would assume the defense of any lawsuit against the employee for violation of the noncompete, and pay for any expenses associated with violation of the noncompete, including attorneys' fees, witness fees, damages, judgments, fines and amounts paid in settlement. Those amounts could be substantial.

Along with the monetary risks, there is the possibility that the court could prohibit the employee from working for you at least for some specified time.