

Motion to Amend the structure of Chapter 8 of the Proposed Restatement of Employment Law

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It is hereby moved that Section 8.01 (a) and associated sections 8.02 and 8.03 be moved to follow section 8.08, which concludes the treatment of covenants not to compete, and precedes section 8.09, Rights of Employee to inventions. It is also moved that all sections be renumbered appropriately accordingly.

Statement in Support of Proposed Motion

Section 8.01(a) concerns confidential information in keeping with the Uniform Trade Secret Act which is an employer property right, not different in concept that an employer's property right in chattel or intellectual property, such as patents and copyrights. The employee owes a duty of stewardship as a bailee to return the employer's property intact at the end of employment. Thus, the confidential information protection should be grouped with the other intellectual property provisions that begin in section 8.09.

Trade Secrets and other confidential information is not properly a subject of loyalty or competitive or anti-competitive activity. There is little, if any case law in support of treating it as a loyalty issue. It is instead a subject of the employer's intellectual property protection.

After moving Section 8.01(a) to its proper place among other intellectual property protection treatments, the remaining Section 8.01(b), which deals with competitive behavior and the treatment of sections 8:03 to 8:08, which deal with non-compete covenants will flow better. There is greater integrity in grouping the various sections that deal with the laws regarding competitive behavior of employees in one portion of the chapter.