

A Lesson from the Fifth Circuit About Louisiana Noncompete Agreements: Establish the Employment Relationship First

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A recent opinion from the United States Court of Appeals for the Fifth Circuit applying Louisiana's restrictive law governing non-competition agreements reminds employers of the importance of establishing an employee-employer relationship before entering into a non-competition agreement. In [*Rouses Enterprises, LLC v. Clapp*](#), No. 21-30293, the Fifth Circuit ruled that Louisiana law does not allow an employer to enforce a non-compete agreement signed by a prospective employee.

Background

James Clapp signed a non-competition agreement shortly after interviewing for a position with the company but before the company had extended an offer of employment. The noncompetition agreement was part of an onboarding package of materials. Clapp worked for Rouses for two years, until Rouses asked Clapp to resign, which he did. He then went to work for one of Rouses's competitors. After reminding Clapp of his obligations under the agreement, Rouses sued Clapp to enforce the agreement.

The Fifth Circuit's Ruling

When asked to enforce the agreement, the Fifth Circuit inspected Louisiana jurisprudence and observed a few foundational principles. First, the obligations of the parties are fixed at the moment the parties enter into a contract. Second, to be enforceable under Louisiana's no-compete statute, La. R.S. 23:921, the non-compete agreement must strictly comply with the requirements and text of the statute. The Fifth Circuit found that in the employment setting, the statute permits non-compete agreements between an employee and his or her employer, but not between a job applicant and a potential employer. Accordingly, because Clapp signed the non-compete agreement before he was an employee, the court rejected the company's request to enforce the noncompete agreement.

Key Takeaways

For [employers using non-compete agreements in Louisiana](#), the takeaway from the *Rouses* case is that non-compete agreements signed after the employee-employer relationship has begun may be

enforceable under La. R.S. 23:921. Based on the *Rouses* decision, Louisiana employers may want to consider removing any non-compete agreement from their pre-employment packages of onboarding materials and tender them only after the employee is employed by the company.

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