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**Changing jobs?
See if you can
Companies taking stand on noncompete contracts**

By Adam Geller
The Associated Press

NEW YORK – The job with a rival firm sounded interesting, but Mark Stultz was doubtful even before the recruiter finished the pitch.

His skepticism eased, though, when the company wooing Stultz explained a state law – one that says employers can't prevent workers from taking a job with a competitor.

So how is it Stultz was eventually forced to give up the marketing job he took, moving his family more than 1,500 miles along the way?

Employers have long asked workers including Stultz to sign contracts pledging they won't go to work for a business rival. And workers and companies have often been uncertain about what to make of these so-called noncompete contracts when they part ways.

But recent face-offs between rival employers and workers, all seeking advantage in an economic downturn that has made jobs and business harder to come by, have further confused all sides.

Many factors today

A host of the factors shaping today's employment market – job hopping across state lines, work on the Internet, mergers that change company ownership – are turning even the most seemingly straightforward noncompete contracts into big question marks.

That point has been underscored by BellSouth Corp.'s ongoing battle to keep its No. 2 executive Gary Forsee from defecting to rival Sprint Corp. But noncompete contracts have also been snaring far less lofty workers – including sales people, financial traders, and software developers.

"If it takes the California Supreme Court to decide ... whether I can work, how is somebody like me supposed to know what to do?" said Stultz, whose former employer won a ruling in December barring him from taking a new job, a case that stretched on for two years in two states and received wide attention.

"The more you think about it all, the more confused you get," said Kevin Martingayle, a lawyer for a Virginia furniture saleswoman whose noncompete contract was recently tossed out by that state's Supreme Court in another closely watched case. "It's as clear as mud."

Horse and buggy days

Noncompete pacts have been around since at least the 1890s, when companies barred traveling salesman from striking out on their own unless their new routes were at least 50 miles away – the maximum a horse and buggy could travel in a single day.

Through the years, courts have tended to favor workers in disputes over noncompete agreements, seeing efforts by companies to collar employees too tightly as unfair restraints of trade.

But business has clearly changed since the horse and buggy. With companies now trying to protect turf and secrets that stretch to much broader horizons, the stakes are higher and uncertainties are mushrooming for workers.

Stultz's former employer, Medtronic Inc. went to court in June 2000 after he took a job as marketing director with Advanced Bionics Corp., a rival medical equipment maker in Sylmar, Calif.

Stultz had signed a noncompete contract when he went to work at Medtronic in Minneapolis, but thought he would be exempt because California has a state law explicitly banning such contracts. California's Supreme Court disagreed, ruling in December that, despite the law, it could not toss out a contract that Stultz had signed in Minnesota.

After working on other assignments for Advanced Bionics for 18 months, Stultz resigned recently and moved his family back to Minnesota.

When home insulation salesman Bill Linder left his job in Cleveland in May 2001 to start his own business, his former employer asked a court to enforce a noncompete contract Linder had signed. It wasn't that simple.

Linder was hired in 1994 by a small family-owned company. That company was sold two years later, when he signed the noncompete contract. By the time Linder left, the company had changed hands twice more and was folded into Masco Corp., one of the nation's largest manufacturers of home improvement and building products.

Linder finally prevailed in December when an Ohio court ruled that the contract could not be automatically transferred from one corporate owner to another without his consent.

"In life, that's everybody's dream, to own their own business and be their own boss," said Linder, of suburban Medina. "But when this whole lawsuit came along it wasn't like I could turn back ... because if I don't win, then what am I going to do?"

Contract too broad

In Virginia, office furniture saleswoman Johnetta Stinnett left her job at Modern Environments Inc. for a nearly identical position with a rival company. Modern went to court, trying to hold her to a contract she had signed, forbidding her to "own, manage, operate, control, be employed by, participate in or be associated in any manner" with a competitor.

But the Virginia Supreme Court decided last April the contract was so broad, it unfairly prevented Stinnett from earning a living. The decision came despite the fact that Stinnett's new job was very similar to her previous position, focused on the same geographic territory.

During the economic boom of a few years ago, many technology companies bent on holding on to the people and ideas that were their biggest asset asked workers to sign contracts.

Peter Hillman, a New York lawyer who counsels employers, recalls a dot-com client who asked his firm to prepare and send a noncompete contract by overnight mail. When he checked in soon after, the employer expressed dismay.

The employees, presented with the contracts, had staged a "confetti fight," tearing up the documents and scattering them around the room.

But many others signed such contracts. As the economy has slowed in the past few years, more employers have threatened to enforce them.

Keeping secrets

While such contracts can't be enforced when workers lose their jobs in layoffs, the agreements they may have signed promising not to divulge company secrets stay in place, Hillman said. Those generally don't hamstring workers from taking a new position, but it does mean they need to stay aware of their commitment not to transfer information, he said.

But many workers don't think about the eventuality of moving on at the time they're asked to sign noncompete pledges.

"You don't know how your life is going to change," Stultz said. "You can't predict the future and what kind of changes you're going to be encountering, at the time you sign these things."