**Conflict of Interest, Trade Secrets, Non-Competition Agreements**

**Conflicts of Interest and Trade Secrets**

1. contractual limitations - if these are an issue, have affected employees sign a clear written agreement promising not to do certain things and agreeing to pay damages in the event that the employees breach the agreement
2. policy guidelines - on top of a written agreement signed by each affected employee, the policy handbook should mention what the employer expects of employees in this regard

**Non-Competition Agreements**

Texas law provides that a covenant not to compete is enforceable only if it:

1. is ancillary to or part of an otherwise enforceable agreement
2. contains reasonable limitations as to time, geographical area, and scope of activity
3. most courts have ruled that the public policy is to promote competition, not limit it, and that before an agreement limiting competition will be enforced, the employer must show how non-enforcement would harm it and that enforcement would not place an unreasonable burden on a person's right to practice a profession or trade or otherwise make a living. The more specialized the knowledge for the position is, the easier it is to show a need to limit competition in some way. The more general the knowledge is, the more difficult it will be to show that the business needs protection from competition (this is also known as the "common calling doctrine").
4. In the case of *Alex Sheshunoff Management Services, L.P. v. Johnson and Strunk & Associates, L.P.*, 209 S.W.3d 644 (Tex. 2006), the Texas Supreme Court held that an "otherwise enforceable agreement" can include an executory promise (a promise that the maker intends to fulfill in the future) made in conjunction with an at-will employment agreement if the employer actually performs the promise it made at the time that it secured the non-competition agreement (such as a promise to give certain training, allow access to certain proprietary information, and similar things that give rise to the business interest protected by the non-competition agreement).
5. See also *Cobb v. Caye Publishing Group*, 322 S.W.3d 780 (Tex.App.-Ft. Worth 2010) (covenant not to compete cannot be enforced outside of area where the employee worked and where the employer had any kind of commercial activity); and *Marsh USA, Inc. and Marsh & McLennon Cos. v. Rex Cook*, 2011 WL 6378834 (Tex. December 16, 2011) (stock options can be consideration to support the agreement).

[Non-disclosure or confidentiality agreements](http://www.twc.state.tx.us/news/efte/confidentiality.html) specifically limiting what types of confidential information or trade secrets an employee may divulge to third parties are usually easier to enforce than non-competition agreements.