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# CAN YOU STOP YOUR EMPLOYEES FROM WORKING FOR COMPETITORS? THE LEGAL TRUTH

In today's information-driven world, the value of confidential business information has skyrocketed. From proprietary trade secrets to sensitive customer data, safeguarding these intellectual assets is paramount for companies seeking a competitive edge. One key tool in this arsenal is the Non-Disclosure and Non-Competition Agreement (NDCA), a legal document increasingly used in the Vietnamese business landscape. At its core, NDCA is a contract between a company and its employees. It serves two key purposes:

- **Confidentiality:** The employee undertakes to keep sensitive company information confidential, both during and after their employment. This includes trade secrets, customer lists, financial data, and any other information deemed critical to the company's success.
- **Non-compete:** In exchange for valuable training or access to confidential information, the employee agrees not to work for a competitor or engage in any activity detrimental to the company's interests. This prevents the company from losing its competitive advantage as a result of staff desertion.

While NDCA offers a powerful shield for business secrets, its effectiveness in Vietnam has been a subject of ongoing debate. The debate surrounding the validity of non-compete clauses within NDCA highlights a complex balancing act between individual rights and business interests. On one hand, the principle of freedom of choice enshrined in Vietnamese law protects the ability of individuals to pursue their chosen career paths without undue restrictions. On the other hand, businesses argue that NDCA is a vital tool for safeguarding valuable trade secrets and confidential information, allowing them to invest in employee training and innovation without fear of their knowledge being appropriated by competitors.

## 1. Argument Against NDCA

This viewpoint draws its strength from the principle of "freedom of choice", enshrined in the Vietnamese Constitution and Labor Code. These documents guarantee citizens the right to choose their profession, job, and workplace. Proponents of this view argue that NDCA with non-compete clauses can restrict this fundamental right, potentially limiting an individual's career opportunities and economic mobility.

There have been court decisions that have ruled non-compete agreements unenforceable due to their conflict with established legal principles. These courts' perspective emphasizes the importance of protecting individual freedom and ensuring that employees are not unfairly constrained in their career paths. By advocating for the unenforceability of non-compete clauses, they seek to prevent potential imbalances in the employer-employee relationship and safeguard the freedom of choice in the labor market.

However, this perspective also raises concerns about the potential impact on businesses. Proponents of NDCA argue that it is an essential tool for protecting valuable trade secrets and confidential information. Without such safeguards, companies may be hesitant to invest in employee training and development, ultimately hindering innovation and competitiveness.



## 2. Arguments in Favor of NDCA

Contractual Freedom: Proponents of NDCA emphasize the principle of “contractual freedom”, stipulated in the Vietnamese Civil Code. They argue that as long as such agreements are entered into voluntarily and without coercion, they should be considered valid and enforceable. This viewpoint aligns with the notion of autonomy and individual responsibility in contractual relationships.

Protection of Trade Secrets: Businesses heavily invest in developing valuable trade secrets and confidential information. NDCA serves as a legal barrier, preventing employees from misappropriating such assets for personal gain or sharing them with competitors. This protection is deemed essential for encouraging innovation and ensuring a fair competitive environment.

Compensation for Training Costs: Companies often invest in training and development programs for their employees. NDCA with non-compete clauses can serve as a form of compensation for such investments, ensuring that the company reaps the benefits of its training initiatives and minimizes the risk of losing its investment to competitors.

There are numerous cases resolved through arbitration that demonstrate this point of view in action, which uphold the NDCA and require the employee to compensate the employer for damages, particularly when it comes to protecting confidential information and protecting businesses from unfair competition.

However, this viewpoint also raises concerns about potential abuse. Critics argue that certain employers might misuse NDCA with non-compete clauses to unfairly restrict employee mobility and stifle economic growth.

## 3. Key Takeaways

As previously indicated, the legal landscape surrounding NDCA in Vietnam paints a complex picture, with diverse perspectives shaping their enforceability. While the absence of specific legal regulations regarding non-compete clauses creates uncertainty, there are a few key takeaways that businesses should consider:

- Voluntary Agreements: NDCA is more likely legally binding when demonstrably entered into voluntarily and without coercion, upholding the principle of contractual freedom.
- Protecting Confidential Information: It should be shown that the company relies on NDCA to safeguard valuable trade secrets and confidential information, fostering innovation and ensuring fair competition.
- Reasonable Restrictions: Non-compete clauses should be designed with reasonable scope and duration, balancing business interests with employee mobility and career opportunities.
- Dispute Resolution: Choosing the appropriate dispute resolution body (e.g., arbitration or courts) is important for ensuring a fair and efficient resolution of any disputes arising from NDCA.

