

Have a bit of sage advice for a newcomer to your area of practice? Send us your "tips & traps"! Your colleagues will be grateful. Email suggestions, cautions, and tales of woe to bb@mnbar.org

▼ **Employing Foreign Nationals**

As the economy slows down, employers who seek to hire or have already hired foreign national workers need to be mindful of a myriad of federal regulations related to changes in preapproved employment, changes in rates of pay, and the implications of reductions in force (layoffs). Pursuant to 8 CFR 214.2(h)(2)(i)(E), employers of H-1B visa holders need to file an amended H-1B visa petition with U.S. Citizenship and Immigration Services to reflect any "material changes in the terms and conditions of employment," which may differ from the initial petition approved. Further, if business conditions are severe, employers might be consider-



ing overall reductions in employee rates of pay, or perhaps unpaid plant/office shutdowns, especially around the holidays. Employers with H-1B visa holders, however, need to attend to the U.S. Department of Labor's "prevailing wage" (20 CFR 655.731(a)) and "anti-benching" (20 CFR 655.731(c)) regulations which require compliance with the H-1B wage obligations when an H-1B visa holder is in nonproductive status due to a decision by the employer. Finally, if an employer does have a reduction in force but seeks to retain an H-1B visa employee and sponsor that employee for U.S. permanent residence, the employer will need to review the regulations at 20 CFR 656.17(k), which potentially require employers seeking labor certification to notify and consider U.S. workers laid off within six months of any position to be labor-certified.

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▲ **Noncompete Contracts**

Noncompete covenants may be easier to impose and enforce in Minnesota as a result of a trio of recent court cases.

Concurrently decided by the Minnesota Court of Appeals earlier this year, the cases upheld noncompete clauses in a variety of circumstances. **Sealock v. Petersen**, 2008 WL 314146 (Minn. App. 2008) (unpublished) (seller of business barred from directly soliciting clients for new business outside proscribed noncompete area); **Tenant Construction Co., Inc. v. Mason**, 2008 WL 314515 (Minn. App. 2008) (unpublished) (\$500 adequate consideration for noncompete clause); **Witzke v. Mesabi Rehabilitation Services, Inc.**, 2008 WL 314535 (Minn. App. 2008) (unpub-



lished) (noncompete upheld 17 years after entered into by rehabilitation consultant). The last of these is particularly noteworthy because it held that "continued employment" for a long period after the noncompete is entered into constitutes sufficient

consideration to sustain a clause, a seeming departure from long-established Minnesota law that continued employment is not, in itself, a sufficient consideration for a noncompete clause. Employees should be wary of entering into these clauses, and try to adhere to existing Minnesota law requiring that they be signed at the time employment commences or, if thereafter, for sufficient consideration. Employers may seek to extend the reach of noncompete clauses by arguing that "a small sum of consideration," or "continued employment" after the

employment begins constitutes sufficient consideration to uphold these restrictive arrangements.

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▲ **Copying Discovery Requests**

How many times have you received discovery requests and dreaded the idea of having to type each word of every request into a word processor? Besides the time involved, were you worried about accidentally including typos? Here's a way to eliminate the time wasted in this process and it's nearly 100 percent typo-proof! You will need a scanner and Adobe Acrobat.

First, scan the discovery requests into a PDF file, using Acrobat. Then, with the document open in Acrobat, click "Document," "OCR Text Recognition," "Recognize Text using OCR." Select "All Pages," then "OK." After a

few minutes, the process will end. Resave the PDF file.

Using your mouse, highlight all Interrogatories. Click "Edit," then "Copy." Open Notepad. Paste the Interrogatories into Notepad. (You do this to get rid of the funky formatting that Adobe Acrobat might cause if you transfer the text directly into Word.)

Save the Notepad text file. Then open a template discovery response from a previous case that you will overwrite



for these new responses. Copy each Interrogatory from the Notepad text file and paste it into the template Word document. Acrobat sometimes turns "nn" into "m" and such, but running spell-check will fix that.

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