Dear HR Knowledge: Should we ask our employees to sign a Non-compete Agreement?

Many companies use non-compete agreements, otherwise referred to as "covenant not to compete" or "restrictive covenant," to protect their confidential information, strategic plans, and trade secrets. They are often used in industries where employees are privy to the organization's products and/or services that are proprietary and unique.

There is much debate over how enforceable these agreements actually are, which has been a topic of discussion with the Massachusetts legislature over the past several years. Currently, they are enforceable in Massachusetts if they legitimately protect business interest and are reasonably limited in time. Massachusetts state lawmakers are working to change the way these agreements are enforced, arguing that non-competes are used too broadly, as they not only limit a worker's right to practice his or her chosen profession, but they hurt innovation and economic development as well.

Massachusetts adds to the growing list of states that are rethinking the legalities and enforceability of non-compete agreements. In 2017, California banned them altogether, with certain limited exceptions.

Companies want to protect their confidential and proprietary information, but for agreements to be enforceable employers need to balance the company's right to protect its assets with an employee's right to work.

We recommend employers work with their legal counsel to ensure they are creating a non-compete agreement that is enforceable in the states in which they are located.