

Legal Update Article

# **Protecting Manufacturers' Investment in Training Skilled Employees**

By James M. Stone &

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## Meet the Authors



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Manufacturers often require highly skilled, experienced employees and may train employees to develop the necessary skills. Training can include apprenticeship programs or in-house training, both of which can cost employers significant time and money. While this training results in a highly skilled workforce that is comfortable with the equipment and operations, the skills are portable and in high demand, and such employees are desirable to other employers, including competitors.

Manufacturing employers, therefore, may be reluctant to offer valuable training if there is a risk they will not receive a return on their investment if an employee leaves the company after receiving the training or leaves to work for a competitor. Employers can take preventive measures to protect their investment. Under U.S. law, a company cannot legally force an employee to stay for a certain time. However, financial remedies for a breach of contract to work a certain period or contractual restrictions are permitted.

Depending on the jurisdiction, a potential solution could be conditioning employment or receipt of training on an employee's entering into a non-compete agreement. The ability and extent to which employers can use non-compete agreements varies significantly from state to state. A company considering using non-compete agreements, therefore, should consult with counsel familiar with the applicable laws to determine whether such an agreement is a viable option. For employers in jurisdictions that enforce non-compete agreements under the circumstances being considered, these agreements are a potent means to protect employers' legitimate business interests by restricting an employee's ability to work for a competitor after leaving the company. Legitimate business interests can encompass a range of concerns, such as the protection of trade secrets and confidential information. Some states have recognized that expensive, time-consuming, specialized training provided by an employer can constitute a protectable legitimate business interest. Having a non-compete agreement will enable a company to seek injunctive or permanent relief where an employee who received specialized, expensive training in the workplace leaves to work for a competitor.

Another potential solution is requiring employees who receive training to enter into repayment agreements. Under these agreements, an employee agrees to pay back expenses associated with training received if the employee leaves the company before the company receives a return on its investment. Such agreements could provide a way for the employer to recoup costs through the court system. While these agreements may be scrutinized by some courts in the same way as non-compete agreements, depending on the state and the circumstances, a repayment agreement may be a practical alternative. In addition to familiarizing themselves with the applicable law, companies considering such agreements should be mindful of proper drafting to ensure compliance with federal and state wage and hour laws.

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