
Croisé: Untangling the Effects of Non-Compete Clauses in Dance Studio Contracts

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Introduction

In the dance community, some of the most popular businesses are dance studios. Dance studios can be found all around the world. Like any other business, dance studios have guidelines that they follow to make their business succeed. Contracts are one of the big factors that are involved in dance studios with the employees and students. The contracts between the studio owner and employees—also known as dance teachers—are considered a binding contract since the majority of them include a non-compete clause in the contract employees they must sign.

A non-compete clause, as E. Hill Mayfield and Jana Cordell state, are “contractual terms under which the employed party agrees in writing not to pursue a similar profession or business endeavor or compete against the former employer party” (86). The main purpose of a non-compete clause is to keep the employees of a business from stealing the customers from the owner and opening their own company, using the same idea, elsewhere. Non-compete clauses in business contracts are common in dance studios and many other communities of practice. Within the secondary research that I have conducted, it is evident that non-compete clauses are also a part of the nursing community of practice as well as those of hairdressers and many other independent employees/workers.

The writers who are creating the contracts of the non-compete clause genre are creating “social facts” that persuade the signee that it is necessary to sign that clause of the contract to be able to work for that company. Bazerman defines social facts as “those things people believe to be true, and therefore bear on how they define a situation. People then act as though these facts were true” (312). Within the majority of the research, it is prevalent that non-compete clauses are written in favor of the business owners. The issue at hand that researchers have investigated is the actual effect of a non-compete clause on businesses and their employees.

Review of Literature

Legal Understanding

When people observe the non-compete clause, they don't fully understand the legal standing of the non-compete clause, meaning what it legally means in a contract. When I was asked and had to sign a non-compete clause for a dance studio, I had to get a lawyer to look at my contract to explain to me what it all meant in more basic terms. The legal aspects and true explanations of a non-compete allow people to understand its purpose (McMullen). Mayfield and Cordell argue,

“Many college students graduate from college and are confronted by prospective employers with the decision to sign or not to sign a non-compete clause or agreement without really knowing enough about them to make a good decision involving potential career implications” (85). The points that Mayfield and Cordell bring to the table go back to the lack of knowledge about non-compete clauses among college students. They conducted a survey to see how many college students had ever encountered a non-compete clause in a contract and how many knew what a non-compete clause was. They found that many students had come across a non-compete clause in a contract before and were not pleased with having to sign the contract. Due to the negative results, the main suggestion the authors make is to provide the true purpose and legal understanding of non-competes’ intentions. In agreement with the legal explanations that Mayfield and Cordell explain, McMullen goes into detail of what a non-compete clause is, or as she calls it in her writing, “restrictive covenants”: “A brief overview of covenants not to compete should help to clarify why courts allow these types of provisions, and a discussion of important factors [nurse practitioners] should consider in this respect is warranted” (686). She investigates what the restrictive covenants are and how they affect nurse practitioners. She also looks into ways that nurse practitioners should alter their non-compete clauses to be equally in favor to them as to the business owner. Wickelgren continues the conversation of the other scholars on what a non-compete clause legally is, but he also talks about how the non-compete is used to deter someone from taking what they know from one firm to open a new firm. “It shows, first,” he writes, “that such clauses are only likely to be used when the worker is subject to liquidity constraints. Second, when the worker is sufficiently liquidity constrained, legal restrictions on the length of the non-compete clause can increase the joint welfare of the worker and the firm” (1). With all of their research, they show agreement on the legal explanations and rights of what a non-compete clause is in the stands of the court. This point has been validated through each of these scholars’ writing and gives support to the point of explaining what a non-compete clause is to any audience.

Enforcement of a Non-Compete Clause in Court

Non-compete clauses are one of those things that you can find in almost any contract in any community of practice. Although you may be able to find non-compete clauses very commonly, one thing to think about with non-compete clauses is: How enforceable are they in court? Enforceability of non-compete clauses is how effective the contract is on punishment if the employees were to go against the contract (Huang; Marx, Fleming; McMullen; Ritter, Rosenberg). Employees must sign the non-compete clause to work for a company, but even with that said, some businesses forget to add important parts in the contracts to actually hold that employee accountable. Through my research, a few of my sources found the enforceability of the non-compete clauses with different employees through the legal system. Going into Huang’s research, the main claim that he makes in his writing is the enforcement of the non-compete clauses on inventors that are both mobile and not mobile: “the severity of judicial enforcement of non-competition agreements has hampered the positive contribution of inventor mobility to invention commercialization and [the] legal infrastructure is a crucial factor in innovation and invention success stories” (341). His research also reveal that mobile inventors perform better than non-mobile inventors, which is due to the fact of not having a non-compete clause binding the inventors to stay in one place.

Following a different route from what Huang wrote, Marx and Fleming give information on the legal enforceability of non-compete clauses. They state, “In the United States there exists no federal law governing the administration of non-competes; instead, policy decisions are left to the states. Most states have elected to sanction the use of non-competes by firms, provided that they pass a ‘reasonableness’ test, primarily with regard to the duration of the agreement” (43). Opposing Huang’s claim that non-competes are always enforceable, Marx and Fleming claim that they are only enforceable by state and California does not allow non-compete clauses.

Looking back into McMullen’s research, although she discusses the legal meaning of non-

competes, she also discusses the enforceability of non-competes of one of the cases she researches in her writing. In her case, she claims, “[A] court can determine there was a valid protected interest, the courts will also look at whether the time limit on the covenant, the geographic restriction placed in the covenant, and the scope of the restriction are reasonable” (687). With the case that she researched, the results showed that the non-compete was enforceable and the employee had to pay the fines for breaking the rules of the signed contract. Lastly, looking into this topic of discussion, Ritter and Rosenberg bring up the point of what the factors are that allow the non-compete to be enforced. “In reality,” they write, “the enforceability of a non-compete agreement has a lot to do with a business’ locale, the mechanics of the agreement’s creation, and the circumstances under which enforcement is sought” (41). They claim that, with these said factors, if one were to falter, then the non-compete is no longer enforceable. This claim aligns with Marx and Fleming’s claim, and also with McMullen’s claim, on the factors of enforceability of a non-compete.

Effects of the Usage of Non-Compete Clauses

With all of the research that has already been done, non-competes are used in many businesses and people have begun to look at how they have affected the employees of different businesses in a variety of communities of practice (Buenstorf et.al; Mayfield and Cordell). The scholars in the sources that I found for my secondary research all conducted some form of experiment to determine the effects of non-competes on different people. Buenstorf et al. conducted an experiment to see the effectiveness of a non-compete by comparing two groups of subjects, one that had a non-compete clause in their contracts and one that did not have a non-compete clause. With their experiment, their results showed, “We find no significantly negative effect of non-compete clauses on employee effort, even if compensation is low” (Buenstorf et. al 2113). Opposing their claim, Mayfield and Cordell found that the effects on their subjects in their survey was a negative effect from the non-compete clause:

The majority of respondents felt the following: by signing a non-compete clause or agreement, they were giving up some of their personal rights; a company that requires employees to sign a non-compete clause or agreement only does so to protect its own interest without concern for the employee; a non-compete clause or agreement favors the employer over the employee; believes that they would have a better chance to win a dispute against an employer if their claim was heard by a judge and jury; disagrees that a non-compete clause or agreement is appropriate, felt they understand a non-compete clause or agreement and believes a non-compete clause or agreement does not protect their interests an employee. (85)

Further Research

With all the research from the sources that I have found, I have been able to pinpoint the topics that have been researched and investigate at a deeper level. It is evident that previous research has focused on the enforcement of a non-compete clause. Another aspect of research that has already been looked into is the legal meaning of non-compete clauses and what they are used for precisely. Within this research, they have used mostly textual analysis and surveys to discover what non-compete clauses look like in practice as well as different perspectives on what they are. The other major topic of research that has been done considers the effects of the use of non-competes in different communities of practice. I would say that this is the most popular topic and this topic shows the effects of the non-compete with other people that could correlate with how it affects people in the dance community. With that being said, these topics of research have helped lead me to find my niche for my own topic of research. Even with people looking into the effects of employers’ non-compete clauses, there has not been any research that has specifically looked into

the effects of non-compete clauses in the dance community of practice, which is exactly what I set out to do. Non-compete clauses make one think about laws and legal rights, but I wanted to look at those aspects in a community of practice that is all about art and creativity.

Methodology

The primary focus of my research was to study the effects of non-compete clauses on different types of people and determine if they are necessary in dance studios. My intended audience for my research includes current and future dance studio owners, dance teachers, and also lawyers that create and enforce non-compete clauses in contracts. I conducted several interviews with people I knew that have had personal experiences with non-compete clauses and contracts, both in the dance community and not in the dance community. I chose to use the interview method for my primary research because it allowed me to get more detailed information on people's experiences with non-compete clauses. Since I am trying to find what the effects of non-compete clauses are in a dance studio, I needed my research data to be very personal to different people and descriptive to give me substantial information. Using the survey method would not have been beneficial to me, since it would only allow me to send out questions to a generalized audience rather than finding subjects that I know have real experiences that I am looking for. I created my interview questions based on the knowledge that I had on non-compete clauses and also based on some of the information that I found while I conducted my secondary research.

Non-compete clauses make one think about laws and legal rights, but I wanted to look at those aspects in a community of practice that is all about art and creativity.

The first person that I interviewed was a salon owner and hairdresser. She has come across various non-compete clauses in the different hair salons that she has worked at. It was a face-to-face interview that I held at the kitchen table inside my house. I asked her my interview questions and, as she responded, I recorded her answers onto my data collection document on my computer. The second person that I interviewed was a former dance instructor at a studio in central Florida who has also come across a non-compete clause. Since she lives in California, I had to conduct her interview by email. I sent her the informed consent form and the interview questions. Once I received my signed consent form and interview responses, I then recorded her data onto my data collection document.

My other form of primary research was a genre analysis of two different non-compete clauses. I found sample non-compete clauses via Google and downloaded two different templates of non-compete clauses onto my computer. The template was the basic information that is necessary in a non-compete clause and then blanks where you fill in with the specific company and employee's information. The next, and final steps, of my research process was coding and analyzing my now recorded data. The coding method that I used for my recorded data was a color-coordinated system signifying different categories of data. After coding my data with my key, I analyzed my data to gather the results found from my interview research.

Some of the limitations that I came across while conducting my research were related to the different methods that I used. When conducting the face-to-face interview, the limitations were the lack of data I received from the interviewee's verbal responses, since I was unable to write down all of her responses. I was only able to gather some textual data from my face-to-face interview, which was another limitation. With the email interview, the limitations included having to hope that I could communicate and get my responses in time for my assignment, since my interviewee lives out of state. The inability to easily communicate and meet up for the interview, along with time, was another limitation that was a part of my research process. The time limit prevented me from

gathering more data and going more in depth with my research process.

Results

The results of my data indicated that the effect from a non-compete clause in a contract was a negative effect, although there were some positive effects. My coding showed a majority of negative effects from my interviewees' responses and their personal responses revealed a negative tone towards the non-compete clauses. The results that I gathered from my interviews showed that negative effects were the main component, evident in a total of seven instances in my coding. The other elements of my data were as follows; positive effects- 4, limitations- 4, definitions- 2, knowledge- 4, personal response- 3. The negative effects were 29% of the total of my recorded data (see Appendix D). The results of my textual analysis showed the specific language used in non-compete clauses and also the frequencies of words and phrases.

The main word that was apparent in non-compete clauses was "agreement" with a 6.3% frequency in a non-compete clause (see Appendix E). This shows the purpose behind a non-compete, although employees take the agreement negatively.

Discussion

The usage of non-compete clauses is common and found in different communities of practices, including the dance community or, more specifically, dance studios. My results show that the main effect is negative, although there are some positive effects. With my first interviewee, although she was negatively impacted through her experiences with non-competes, she managed to balance them out with how knowledgeable she was on non-compete clauses and their purposes. She states, "No it didn't affect my relationship with my employer due to knowing that's how they need to run their business" (see Appendix B). She explains that she was younger when she originally signed her non-competes and didn't appreciate them then, but as a business owner she now understands the purpose behind them and why they are used in a positive way. With the data from my second interviewee, her attitude towards the non-compete clauses was slightly different. She didn't have a positive outlook towards non-compete contracts and was fully negative towards them. She says,

I immediately felt betrayed; as a person of substance and principle I had given my entire life to this particular business. I found the ask to sign a non-compete to be a shot against my character and also a clear sign to the owner of the business where her priorities lied. I knew at that moment that I was nothing more than an employee, and any possibility that business owner (who I considered a close confidant) had my best interests in mind was a fantasy. I felt ashamed." (see Appendix C).

Both of my subjects have had negative effects from the non-compete clauses, which shows that the main effect found from non-competes was a negative one.

As I analyzed my data, some of my main findings were that a non-compete makes employees feel bad about themselves and immediately reject a non-compete clause upon receiving it. Heather, the salon owner, states in her interview, "I refused to want to sign it immediately." With the results from my genre analysis, the language and specific format of a non-compete leads the clause to be in favor of the employer and not the employee. This is a contributor to why employees respond to non-compete clauses in a negative way. For example, in a non-compete clause, the employer will state in the clause that "[Employee name] shall not...." The definitive tone that the employers use in the non-compete clauses is part of the reason the employees have a negative effect from non-competes. The employers are using social facts throughout the non-compete clauses, which favors the employer and affects employees in different ways. The specific wording used in the non-compete clauses is a reason behind the effects they have on people.

Conclusion

The result from my research is that the most evident purpose of a non-compete clause in a contract is to help keep the employers' business secure. With the factors of how this genre is formatted and the specific language used, it also gives support to my claim that non-competes are beneficial to employers and not as much to employees. With all of the information that I found, I can claim that non-compete clauses have a negative effect on the employees of any business and are not a necessity to a business. If they were a necessity, then some states in the United States would not have abandoned the usage of non-compete clauses in contracts within businesses.

The definitive tone that the employers use in the non-compete clauses is part of the reason the employees have a negative effect from non-competes.

My research opens a gate to look into more information about non-compete clauses in the different communities of practices. With my research, my interview questions were based on the person's knowledge of a non-compete, if they have encountered a non-compete before, and how that made them feel. In the future, I would recommend asking questions that were based more on the effects of the non-competes in the dance studio and how it affected the business rather than just the employee. Also, I would recommend interviewing a business owner that uses a non-compete clause to get their perspective. Unfortunately, I was not able to do this. Although I did not think a survey was the best choice for my research, it might be a good possibility for other researchers to use to get responses from more than just two or three people. With my niche of looking at the effects of the non-compete in dance studios, I think the biggest way to continue this research is to continue looking into dance studios from all over the world because the effects of the non-competes may vary by state. Depending on the results that other researchers get, it may or may not strengthen my claim that non-competes have a negative effect in the dance studio environment. This information could possibly lead dance studio owners to find another way to agree on the work terms with their employees and eliminate the non-compete clause in the dance studio, which may strengthen working bonds between the employer and employee in the dance studio.

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MONIQUE VELEZ

Monique Velez is a sophomore at the University of Central Florida and is majoring in Entertainment Management with a minor in Dance. She has been dancing since she was 2 years old and has loved the performing arts for her whole life. Her biggest dream in life is being able to travel the world. She has already traveled to almost all of the states in the United States when she worked with a traveling dance convention.

APPENDIX A: Interview Questions

1. Do you know what a non-compete contract is? Could you explain what it is?
2. Do you know why non-compete clauses were created?
3. Are non-competes a common thing found in businesses?
4. How many different people do you think have seen a non-compete clause before?
5. Do you know how a non-compete clause stands up in court?
6. Have you ever had to sign a non-compete contract?
7. When receiving a non-compete contract, what was your immediate response?
8. Did the non-compete have a positive or negative effect on you?
9. Did the contract affect your work ethic (How you performed at work) in any way?
10. Did the contract affect the way you taught students/ or (relationship with clients) whatever your line of work was?
11. How did the contract affect your relationship with your employer?
12. Do you still work for that company that gave you the non-compete contract?
13. Would you say the contract is or is not beneficial for the employee or employer?
14. Do you think contracts in general are necessary in a dance studio?
15. Do you think a contract does or does not make a dance studio more successful?

APPENDIX B: Interview 1 Coding

Codes:

Limitations

Negative Effects

Positive Effects

Definitions

Knowledge

Personal Responses

Q: Do you know what a non-compete contract is? Could you explain what it is?

A: Yes, I do. It is a contract from your employer stating if you are to leave their employment you cannot work within a certain mile radius in the same field for a certain number of years.

Q: Do you know why non-compete clauses were created?

A: Yes, so that people don't jump from business to business taking such clients with them.

Q: Are non-competes a common thing found in businesses?

A: Yes

Q: How many different people do you think have seen a non-compete clause before?

A: Millions of people

Q: Do you know how a non-compete clause stands up in court?

A: Not very well, because legally you cannot mandate what a person can or cannot do.

Q: Have you ever had to sign a non-compete contract?

A: Yes; At [two hair salons].

Q: When receiving a non-compete contract, what was your immediate response?

A: I refused to want to sign it immediately.

Q: Did the non-compete have a positive or negative effect on you?

A: Negative Effect; I felt it was someone telling me what I can or cannot do.

Q: Did the contract affect your work ethic (How you performed at work) in any way?

A: No, it did not affect my work ethic

Q: Did the contract affect the way you taught students/ or (relationship with clients) whatever your line of work was?

A: No, it didn't affect my relationship with my clients.

Q: How did the contract effect your relationship with your employer?

A: No, it didn't affect my relationship with my employer due to knowing that's how they need to run their business.

Q: Do you still work for that company that gave you the non-compete contract?

A: No, I quit due to new employment opportunities

Q: Would you say the contract is or is not beneficial for the employee or employer?

A: Beneficial to employer and not beneficial go employees at all.

Q: Do you think contracts in general are necessary in a dance studio?

A: Yes, contracts are important to not allow teachers to take students from the dance studio.

Q: Do you think a contract does or does not make a dance studio more successful?

A: Does not make the studio more successful, because if the teachers are happy at their employment then they wouldn't want to leave anyway, and the contract wouldn't even matter.

APPENDIX C: Interview 2 Coding

Codes:

Limitations

Negative Effects

Positive Effects

Definitions

Knowledge

Personal Responses

Q: Do you know what a non-compete contract is? Could you explain what it is?

A: Yes, a non-compete contract is an agreement between employer and employee that says employee will agree to not work for a competitor immediately after leaving employment with the current job for a specific amount of time.

Q: Do you know why non-compete clauses were created?

A: Not the exact reason, my assumption would be so sensitive company information can be protected and not given to a competitor. Also, to prevent loss of customers.

Q: Are non-competes a common thing found in businesses?

A: I am not sure, I personally have worked in three industries- dance, hair/beauty, and sound production. Dance was the only area where I have seen a non-compete.

Q: How many different people do you think have seen a non-compete clause before?

A: Not sure how to answer this question, but I would assume its common in higher stake jobs and industries- especially in "corporate" type environments.

Q: Do you know how a non-compete clause stands up in court?

A: No, I have never been in a firsthand situation where I was forced to defend or enforce one. From secondhand experience, I have seen an ex-colleague face probation and strict penalties for violating non-compete and trade secrets.

Q: Have you ever had to sign a non-compete contract?

A: Yes; at [a dance studio] in [central Florida].

Q: When receiving a non-compete contract, what was your immediate response?

A: I immediately felt betrayed; as a person of substance and principle I had given my entire life to this particular business. I found the ask to sign a non-compete to be a shot against my character and also a clear sign to the owner of the business where her priorities lied. I knew at that moment that I was nothing more than an employee, and any possibility that business owner (who I considered a close confidant) had my best interests in mind was a fantasy. I felt ashamed.

Q: Did the non-compete have a positive or negative effect on you?

A: Overwhelmingly negative, all I thought about was how selfish and short sighted the business owner was.

Q: Did the contract affect your work ethic (How you performed at work) in any way?

A: No, it would have been against my character to give anything less than 100%

Q: Did the contract affect the way you taught students/or (relationship with clients) whatever your line of work was?

A: No, because I loved my student far too much to let that affect me. At the end of the day, it was about them – not me.

Q: How did the contract affect your relationship with your employer?

A: It didn't affect my relationship with the employer; but it let me know where I stood. I thought I was "family" and I thought this person would want to see me succeed no matter the circumstance. Instead it was a crude reminder that I was nothing more than a pawn in a business and despite my loyalty over the years – she was still willing to seek legal action against me given the opportunity.

Q: Do you still work for that company that gave you the non-compete contract?

A: No

Q: Would you say the contract is or is not beneficial for the employee or employer?

A: In the dance industry, I don't see it as beneficial. Why would you want to handicap a person's ability to succeed?

Q: Do you think contracts in general are necessary in a dance studio?

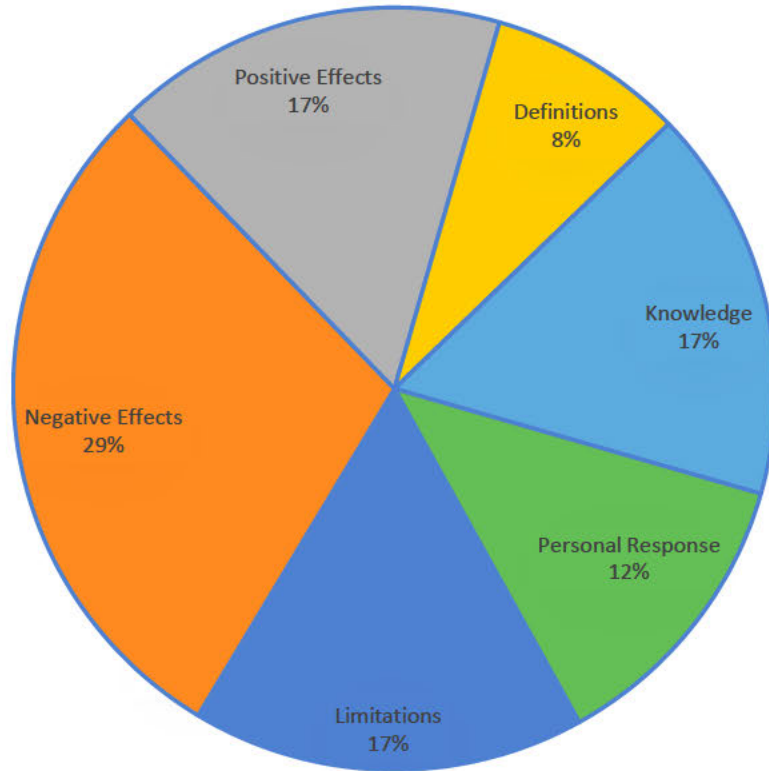
A: Contracts can be an asset, as they give both sides mutual assurance to a set of standards that oftentimes are not clearly defined; i.e. work duties, compensation, areas of responsibilities, etc.

Q: Do you think a contract does or does not make a dance studio more successful?

A: I think it depends on the ownership, the dynamics of the team, the size of the organization, etc. Generally speaking, contracts are helpful.

APPENDIX D: Interview Results, Graphs, and Data

Interview Results



APPENDIX E: Textual Analysis of Non-Compete Clauses Results

Word	Occurrences	Frequency	Rank
agreement	24	6.30%	1
you	21	5.50%	2
company	18	4.70%	3
employment	11	2.90%	4
your	10	2.60%	5
shall	9	2.30%	6
provisions	8	2.10%	7
term	6	1.60%	8
agree	5	1.30%	9
breach	4	1%	10