Nowadays, the most valuable assets of many businesses are intangible. As a result, the departure of an employee in possession of confidential and proprietary information may cause harm beyond the mere loss of manpower. To limit the adverse effect of the increased mobility of key employees, companies endeavor to limit or restrict the use by employees of any confidential information, methods or processes which contribute to maintaining their competitive edge.

However, employment lawyers know from their daily practice that the most common error made by employers is to implement excessive protective measures and in particular non-compete clause, which are too broadly drafted.

In France, like in the USA, covenants not to compete are not prohibited per se. They are unlawful only if they create unreasonable restraints upon employees’ freedom to work. In the same way, Article 340 of the Swiss Code of Obligations and Article 2125 of the Italian civil Code do no prohibit employment agreements which limit employees’ rights to perform their activities to subsequent employers, provided that the scope of the restrictions do not prevent employees from finding an alternate job.

Notwithstanding the foregoing, when they are in the international arena, US employers should refrain from seeking to blindly impose the “American way” of drafting and implementing restrictive covenants in an attempt to harmonize their employees’ working conditions all over the world. Indeed, there is simply no such a thing as a standard restrictive covenant, which could be implemented whatever the location of the workplace in the world.
For instance, in the US, employers frequently require their employees to assign rights to patents or inventions created and conceived in the course of their employment. However, many foreign countries strictly limit this right, requiring substantial compensation in exchange for such an assignment of rights.

Furthermore, unlike the US Trade Secrets Act, there is no regulation in France defining the notion of “trade secret”. Therefore, companies and individuals are free to stipulate in an employment agreement their own definition of "trade secret".

This being said, thanks to the French Supreme Court, the notion of trade secrets has been progressively defined as any manufacturing methods (any formula, pattern, device, compilation of information …) having a practical or commercial value, which is used in one’s business and that gives its owner an opportunity to obtain a competitive advantage over those who do not know it. As a result, the notion of trade secrets in force in France does not significantly differ from the one in force in the US.

In any event, as a practical recommendation and in order to avoid any bad surprise, US employers should check whether the local law has adopted any definition of what is a trade secret and if that definition is more or less in line with that provided by the Uniform Trade Secrets Act or the law which governs the protection of trade secrets in each state of the US.

More generally, US companies that choose to “go global” should never forget that employment laws in the international arena significantly differ according to the legal, social, political and economic background in each country. The United Kingdom’s legal system, for example, is an aggregation of statutes and case law, while the law of France is based on Civil law and various codes, including the labor Code, which are probably more detailed and comprehensive about the application of the law than is the English system.

Furthermore, US employers should also take into account the existence of supra-national legislation such as the European Union regulation deriving mostly from the Treaty of Rome and the Directives adopted by the E.U. Authorities which super-imposes itself over the national regulations of the fifteen member states in various important employment law issues such as the working time, fixed term employment agreements, the European works council, the transfer of undertakings …

It appears from the foregoing that US companies and US lawyers should always keep in mind that:

• while employment relationships in the US are governed by private arrangements which are voluntarily entered into between employers and employees, they generally
consist, in other industrialized countries, in a comprehensive and paternalistic set of legal rules the main purpose of which is to protect employees in their subordinate relations vis-à-vis their employers;

• consequently, most employment laws in industrialized countries and in particular in western Europe are more employee-friendly than US employment law (including California law);

• as a result, foreign jurisdictions tend to regulate the employment relationship far more intrusively than does the US;

• employment agreements must be tailored to fit the law of each foreign jurisdiction, with care taken to ensure that there is no particular conflict between US law and the law of the foreign country in which the employee will work.

I. BEFORE AND IN THE COURSE OF THE EMPLOYMENT AGREEMENT, THE EMPLOYEE IS BOUND BY AN OBLIGATION OF LOYALTY

I.1 Prior to the signature of the employment agreement

As employees are recruited on the basis of their professional skills and experience, it is legitimate for the employer to gather relevant information on candidates throughout the recruitment process.

Pursuant to Article L.121-6 paragraph 2 of the labor Code, the employee must answer to the employer’s questions during the recruitment process with good faith, provided that the questions are consistent and in connection with the job position to be fulfilled. In other words, the employee is under no obligation to answer to questions relating to his private life which are not relevant with the job position to be fulfilled.

In any event, the employee cannot provide the employer with false or inaccurate information if the information that is requested by the employer is directly associated with the job offer and aims at evaluating his/her professional skills and aptitude to carry out the duties to be job position at stake.

As a result, the French case law finds that the employee’s divulgation of false information on his/her qualification or experience is a breach of his/her obligation of loyalty which may invalidate the employment contract. The employer must prove that the employee’s breach of his obligation of loyalty conclusively led it to enter into the employment agreement (See labor Division of the Supreme Court, ruling of October 5, 1994). However, the French Supreme Court is particularly restrictive to accept such an
argumentation on the part of the employer (See labor Division of the Supreme Court, ruling of February 16, 1999, Dr. soc. 1999, p. 396).

The employee must inform the employee of any non-compete clause that would be binding toward his/her former employer, even though s/he has not been requested to do so during the interview with a employer (See labor Division of the Supreme Court, ruling of January 3, 1964, D. 1964, jurispr. P. 215). However, with the exception of the non-compete clause, the employee cannot be blamed for failing to disclose any information that could have influenced the employer during the recruitment process had it been brought to the employers’ knowledge (See labor Division of the Supreme Court, ruling of April 25, 1990, D. 1991, jurispr. P. 507).

Therefore, the employer must conduct a thorough interview with the candidate and ask him/her any information that is relevant to determine whether the candidate’s profile is suitable for the job.

I.2 When signing the employment agreement

The signature of the employment agreement may be preceded by negotiations during which the parties exchange their points of view and discuss about their respective proposals in order to determine the contents of the employment agreement.

The parties may decide to stop their negotiations, provided that they remain loyal one another. To that end, the French Supreme Court is used to rely on one principle i.e. no one should enter into negotiations without a serious intention to contract (See Court of Appeals of Paris, ruling of October 25, 1991, RJS 12/1991, n°1284). When applying this principle in case of termination of the negotiations, the French labor courts consider that the terminations which are abusive or took place under vexatious circumstances may involve the liability of the party which took the initiative of the termination. Indeed, due to the relationship of confidence that is supposed to increase between the parties as the negotiations go further, the French Supreme Court deny the employer and the employee the right to terminate the negotiations without cause when the negotiations went so far that one party may think that the other party is about to sign the employment contract (See Court of Appeals of Paris, ruling of December 13, 1984, RTDC 1986, p. 97).

I.3 In the course of the employment agreement:

As their English counterparts, the French courts consider some terms so central to the employment relationship that they will be implied into every employment contract. This is certainly the case for the duty of fidelity or good faith which is owed by every employee to his/her employer.
1.3.1 The employee’s duty not to compete:

Under French employment law, the non-compete clause is dormant until the employment agreement is terminated. It does not mean however that the employee may not be subject to any restrictive covenant while his/her employment agreement is in force.

Indeed, the French Supreme Court holds that during the term of his/her employment agreement, the employee is bound by an obligation of loyalty vis-à-vis the employer (See labor division of the Supreme Court, ruling of February 12, 1985, “Bodigeat v. SICA Centre Est”). Under Austrian law (See section 7 of the Employees’ Act), the employee is also prohibited from competing with his/her employer during the term of the employment agreement.

As a result, the employee is not allowed to compete against the employer, even though the employment agreement does not contain any express provision in this respect. In other words, as of his/her hiring date and until the last working day of his/her prior notice period, the employee is necessarily bound by an obligation to loyally perform his/her duties and must refrain, among other things, from:

- carrying on or engaging in a competing business with the employing company;
- disparaging the employing company;
- purchasing shares and being appointed director in a company carrying out similar activities (in particular if the employee is an executive with managerial duties) (See commercial Division of the Supreme Court, ruling of February 27, 1991 “Thomson v. Boiveau”);

However, employees working in France are not prevented from seeking outside employment and even making preparations to compete while employed such as taking any necessary steps to create a competing company, provided that they are not subject to a non-compete clause and their competing activities do not actually start prior to the termination of their employment agreement (See labor division of the Supreme Court, ruling of February 20, 1975, B.C. 75-V-84). Apparently, the English courts are in the same line as their French counterparts. In an English court decision, it has been held that there is not absolute bar on taking preparatory steps towards setting up a competing business, provided that employees do not “fraudulently undermine the employer by breaking the confidence reposed in him” ( Robb v. Green).

The employee’s obligation of loyalty is enforceable by the employer through disciplinary sanctions e.g. terminating the employee’s employment agreement for reckless misconduct or even gross fault, initiating legal proceedings for damages …
I.3.2 The employee’s confidentiality obligation

Most countries recognize that it is legitimate for an employer to prevent the alienation of its confidential or proprietary business information so long as these restrictions on disclosure and use are reasonable.

For instance, in Denmark, under §10 of the Marketing Act employees are forbidden to procure or seek to procure knowledge or possession of the company’s trade secrets by “improper” means.

Indeed, in almost all the jurisdictions, an usual method of preventing the misappropriation of trade secrets and confidential information is to bind the employee by having him to sign an employment agreement in which he/she (i) acknowledges the confidential nature of the information of which he/she may become aware during his/her employment and (ii) undertakes not to disclose it to subsequent employers or use such information for his/her own commercial endeavors.

When drafting the covenant, it is necessary for the employer to demonstrate the existence of an interest, which is likely to be protected i.e. an interest which is vital to maintaining the company’s business and competitiveness. However, the employer must also be able to demonstrate that it is has consistently acted in all reasonable ways to protect such interest. Indeed, the mere assertion that information is confidential is not sufficient to ensure its treatment as a protected interest.

For instance, customer or contact lists and pricing data may not be considered confidential if the employer seeking enforcement of a restrictive covenant is unable to demonstrate that the information cannot be assembled by accessing public data. As a matter of fact, it is necessary that the employee has knowledge of personal details and needs of the customers.

a) The confidentiality obligation may be subject to disciplinary sanctions or damages:

In France, the employer who would have omitted to specify a confidentiality obligation in an employment agreement is not deprived of any protection as he could rely on the well-established principle of French case law that an employee is necessarily bound by an obligation of “discretion” during the term of his/her employment agreement. This obligation, which derives from the employee’s obligation to perform his duties in good faith as set out in Article L.120-4 of the French labor Code, is essentially a requirement that the employee should not disclose to third parties or misuse confidential information proprietary to his/her employer even where there is no written employment agreement.
Under this obligation of “discretion”, disclosing information to third parties which could harm the employer’s business by discrediting its commercial reputation vis-à-vis suppliers or customers or giving a commercial advantage to competitors could lead to the termination of the employment agreement for gross fault.

b) The breach of confidentiality obligation may even be subject to criminal sanctions

Article L. 152-7 of the French Labor Code prohibits employees from disclosing or from attempting to disclose trade secrets belonging to their employers.

Moreover, article L. 621-1 of the Intellectual Property Code makes it a criminal offense for a director or an employee to reveal or attempt to reveal to third parties trade secrets. The sanctions are imprisonment of up to two years and a fine of up to EUR. 30,490. The court can also deprive the individual of certain civil rights for a period of up to five years.

Unlawful appropriation of trade or commercial secrets deriving from confidential documents is considered as theft on the basis of Article 311-1 of the criminal Code. This legal is more or less the French counterpart of the US Economic Espionage Act.

Article L. 152-6 of the Labor Code punishes anyone who corrupts or attempts to corrupt an employee to obtain access to his employer’s trade or commercial secrets.

II. WHEN THE EMPLOYMENT AGREEMENT IS TERMINATED: THE EMPLOYEE MAY BE SUED FOR UNFAIR COMPETITION EVEN IN THE ABSENCE OF A NON-COMPETE CLAUSE

In principle, an employee whose employment agreement does not contain any non-compete clause is free, at the end of his/her prior notice period, to go to work with a competitor or to set up his own competing business.

The individual’s freedom to work is laid down in the French Constitution and is substantiated as follows by French courts: “the risks incurred by a company due to the activities of its competitors is inherent to the running of a business … Even though it may be unpleasant, competition from former employees is nothing but a usual aspect of business which cannot be prohibited either by law or courts” (See ruling of the commercial Court of Paris, ruling dated March 14, 1973, Gaz. Pal. 73-II-740).

Article 41 of Italy’s constitution also provides that “private economic enterprise is free. However, it cannot be carried out in conflict with security, freedom and human dignity”.

However, individual’s freedom to work is not absolute and remains under the control of courts.

After the termination of the employment relationship, French case-law set limits as to the manner in which an employee may compete against his former employer, even in the absence of a non-compete clause in his/her employment agreement. If such limits are infringed, the employee may be sued for unfair competition. In its decision rendered on November 10, 1994, the Court of Appeals of Paris ruled that:

“[if] it is legitimate, in all cases, that an employee harvest the fruit of the experience he gained with prior employers, which constitutes for the employee a normal factor of enhanced value, this does not justify unfair behavior which can consist in disorganizing a former employer by massive employee departure or in disclosing manufacturing secrets and technical or commercial knowledge in order to enable the latter to capture the clients of the former employer”.

Indeed, using the former employer’s confidential information to compete or to solicit business from a former customer or poaching employees is a tort on the basis of Articles 1382 and 1383 of the French Civil Code (which were promulgated in the early years of nineteenth century).

Article 1382 provides that “any action by any person which causes damage to another obligates the person by whose fault is occurred to indemnify it”, whereas under article 1383, “every person is liable for the damage which he has caused not only by his acts but also by his negligence or imprudence”.

For instance, French courts are inclined to hold employees liable for soliciting and poaching within a short period of time their former employer’s long-standing clients for the benefit of the business they have recently set up (See Commercial Division of the French Supreme Court, ruling of February 2, 1990, B.C. 90-V-38).

III. COVENANTS NOT TO COMPETE

Non-compete clauses in a contract or in a collective bargaining agreement are generally defined as provisions prohibiting the former employee from operating, controlling or performing a competing activity, business or profession in a defined area, for a specified period of time, after the termination of his/her employment with that employer.

Like in the US, there is no law in France that defines the permissible scope of a non-compete agreement.
However, US employers should feel familiar with the rules in force in the Western Europe countries as a majority of them (if not all of them) restrict covenants not to compete like many states in the US.

Generally speaking, in most jurisdictions restrictive covenants not to compete will be enforceable if (i) they are reasonably limited in time and place; (ii) they are limited to what is reasonably necessary to protect the employer’s business; (iii) they do not unreasonably restrict the legitimate rights of the employee to find out a new job and (iv) they may provide for a financial compensation to the employee.

These prerequisites may vary from one country to another.

For instance, under Article 2125 of the Italian civil Code, restrictive covenants which restrain the rights of an employee to perform activities or to provide services, once his/her employment agreement has been terminated, are enforceable and valid only if:

- the restrictive covenant is drafted in a written form;
- the restrictive covenant provides compensation for the employee;
- the object and the geographical scope of the restrictive covenant are limited.

Under Article 340 of the Swiss Code of Obligations, to be valid a non-compete clause must meet the following prerequisites:

- the existence of a written agreement;
- the employee’s access to certain trade secrets and
- the possibility of substantial harm to the employer.

Under the Dutch law, a non-compete clause must be in writing. In addition, the non-compete clause must be explicitly agreed upon both the employer and the employee. This means that a non-compete clause in a collective bargaining agreement or a personnel handbook will be considered invalid.

### III.1 Writing:

Unlike the US regulation, many employment laws provide that employment agreements must be in writing and encompass the basic terms of employment, i.e. job description, job position, compensation, duration of the employment, location of the workplace, indication of any applicable collective bargaining agreement, notice period ... In this respect, the E.U. Directive N° 91/533 dated July 1st, 1993 specifies that employers should provide new employees with a written employment document (i.e. an employment agreement or an offer letter) within two months of their hiring.
It is worth noting that even in the jurisdictions where employment agreements can be entered into verbally, a restrictive covenant must be contained in a writing or, at least, in a collective bargaining agreement. The main interest of such a requirement is to ensure that the employee is fully aware of the scope of his/her undertaking.

The French Supreme Court has ruled that the absence of a written employment agreement does not preclude the application of the relevant collective bargaining agreement imposing a non-compete clause upon the employer (See labor division of the Supreme Court, ruling of July 9, 1976, B.C. 76-V-451).

The employer may also be willing to insert a non-compete clause in an employment agreement subsequently to its entry into force. However before doing so, US employers should check whether the local regulation allow employers to make unilateral changes to substantive employment terms and conditions without the prior written consent of the employee. In some countries like France, unless provided otherwise in the employment agreement, the employee is allowed to refuse a substantial modification to his/her employment agreement. In such an event, the employer must re-establish the status quo ante or dismiss the employee according to the established standards of procedural and substantive due process that are appropriate for economic reasons.

### III.2 Legitimate interest:

The reason for stipulating a non-compete clause is to safeguard the legitimate rights of the employer. However, the admissibility of restrictive covenant is dependent upon whether the protection sought is adequate to attain this objective. In other words, a prohibition of competition can be imposed only to the extent that it is reasonably necessary to protect legitimate interest of an employer.

However, if restrictions are too broadly drafted, French courts will refuse to enforce them, even though the particular employer could demonstrate a legitimate interest to be protected.

For example, French courts refuse to enforce a non-compete clause against a former employee whose duties in the company did not allow him/her to have access to any valuable technical or commercial information such as a maintenance worker (labor division of the Supreme Court, ruling of May 14, 1992). Therefore, the employee subject to a non-compete clause must either have high technical qualifications or be aware of valuable business information concerning the commercial organization of the company (e.g. purchasing and supplying sources, pricing, distribution channels, marketing and advertising, …).
Thus, in order to increase the possibility of a restrictive covenant being successfully enforced, it is critical that any restriction be carefully drafted, always having regard to the employer’s specific and legitimate interests to be protected and which give reasonable reason to restraint the employee’s freedom to work in light of what is generally accepted as reasonable in the relevant trading business.

In Ireland, the fact that an employee has expressly agreed in writing to the inclusion of a restrictive covenant in an employment agreement is not conclusive of its reasonableness. It is only a factor considered by the courts to favor its enforceability.

Generally, in jurisdictions where restrictive covenants are enforceable, courts mainly focus on whether the restrictive covenant prevents the employee from continuing his/her profession and earning a living (See labor division of the Supreme Court, ruling of December 18, 1997, B.C. 97-V-458).

In various countries (e.g. the USA, the UK, Italy, France, Austria), statutes or case law refer to geographical or temporal restrictions as prerequisites to validate or not a restrictive covenant.

For instance, under Article 340a of the Swiss Code of Obligations and Section 36 of the Austrian Employee’s Act, the employer must establish reasonable limits for the prohibition of competition in terms of location, time and subject matter.

**III.3 Temporal restrictions:**

French courts generally uphold restrictions ranging from one year to two years after the termination of the employment agreement;

In Ireland, Courts have upheld restrictions ranging from 6 to 12 months after the termination of the employment agreement.

In Austria, according to Section 36 of the Employee’s Act, the enforceability of such a covenant restriction should not exceed one year. In the Netherlands, the Parliament envisages to limit the duration of non-compete clauses to twelve months.

According to the provisions of the Swiss law, the prohibition of competition cannot remain in effect for a period longer than three years, unless justified, for example, if an infringement of manufacturing secrets is at stake.

In Italy, the duration of the non-compete agreement cannot exceed five years if the employee is an executive and three years in any other case. If the clause provides for a
longer period, it will automatically be reduced to five or three years, depending on the job position of the employee.

III.4 Geographical restrictions:

The geographical scope of a non-compete clause must not exceed what is reasonably necessary to protect the employer’s business, or unreasonably restrict the employee’s ability to work. In determining whether a geographical restriction is reasonable or not, courts consider the nature of the employer’s business and the geographical area serviced by that business.

From a practical point of view, geographical restrictions should not extend beyond the area in which the employer operates (e.g. the Paris area or the “Provence-Alpes-Cote d’Azur” Region).

In this respect, there is a strong likelihood that a restrictive covenant, which would force the employee to leave France in order to be able to continue his/her profession would be invalidated by French courts.

III.5 Restrictions as to the object of the non-compete clause:

The restrictive covenant must be circumvented to a specific sphere of activity and should not prevent the employee from finding an alternate job matching with his/her skills (See labor division of the Supreme Court, ruling of December 2, 1997, B.C. 97-V-514).

Article 2125 of the Italian civil Code contains similar provisions as it substantially provides that to be enforceable and valid a restrictive covenant must be limited as to its object.

It should be noted that French Courts are particularly strict when focusing on whether a non-compete clause is enforceable. Indeed, a salesman working for a competitor although bound by a non-compete clause to his former employer cannot contend that he has not "solicited" his former employer’s customers or that he has not taken a job in a department that involves customer contact. The sole fact that he is working on behalf of a competitor is conclusive of a violation of the non-compete clause.

III.6 Compensation:
Until July 10, 2002, compensating the employee for the period of non-competition was not a prerequisite for validity of the non-compete clause in France, unless provided otherwise in the applicable collective bargaining agreement.

Only, the local regulation applicable in the Alsace-Lorraine region (East part of France close to Germany) required that a covenant not to compete provide for a compensation in favor of the employee.

However, in three decisions rendered on July 10, 2002 by the Labor Division of the French Supreme Court, the Supreme Court ruled that compensating the employee for the period of non-competition is a prerequisite to validate a covenant not to compete.

More particularly, the French Supreme court held that “covenants not to compete are enforceable as long as they (i) are necessary to protect a legitimate employer interest, (i) are limited geographically and temporally, (iii) are reasonable as to the type of employment and (iv) provide for a financial compensation to the employee”.

In the first case, an employer had introduced a covenant not to compete in the employment agreements of three employees, who had been taken over from another company, pursuant to the French regulation giving effect to the E.U. Acquired Rights Directive. After their resignation, the employees had been hired by a competitor. The employees had been held liable for breach of their restrictive covenants by the labor court and then by the court of appeals. The decision of the court of appeals has been quashed by the Supreme Court on the basis that the covenants were not enforceable in the absence of any financial compensation.

In the second case, an employee challenged the enforceability of the non-competition covenant inserted in his previous employment agreement. As the applicable collective bargaining agreement did not specify any financial compensation to the employee subject to a restrictive covenant, the Court of Appeals had found that the challenged covenant was enforceable. This decision has been reversed by the Supreme Court on the ground that in the absence of any financial consideration the covenant not to compete is deprived from any legal effect.

Same kind of ruling in the third case where a former employee had set up his own business in breach of the covenant not to compete stated in his previous employment agreement.

Therefore, as it is the case in Italy, compensating the employer for the period of non-competition is a prerequisite for validity of the non-compete clause in France. The rationale of this compensation is to indemnify employees, at least partially, for limiting their career opportunities.
In the Netherlands, the Parliament is currently considering to change the legislation that is applicable to non-compete clauses. The main change would include an obligation of the employer to compensate the employee during the period the non-compete restrictions apply.

Although not mentioned in the July 10, 2002 decisions, the restrictive covenants could be invalidated if the compensation is not proportionate to the employee’s sacrifice and loss of earning. To determine whether an employee is reasonably compensated or not, it is necessary to refer to the applicable collective bargaining agreement or (if it is silent on this particular issue) to grant a compensation ranging from 20% to 50% of the employee’s monthly gross salary and to multiply it by the number of months during which the covenant remains in force.

In Germany, a non-compete clause is valid and enforceable only if it provides for adequate compensation during the post-contractual, non-competition period. The indemnity must not be less than one half of the employee’s total compensation (including salary, bonuses, commission, monetary value of use of company car, etc.) at the time of termination. If the agreement does not provide for an indemnity at all, it is null and void. If the agreement provides for an indemnity of less than one half of the employee’s total compensation at the time of termination, the employee has the option to choose whether s/he wants to comply with the prohibition not to compete (by claiming the contractually agreed indemnity), or to disregard the prohibition not to compete, thereby waiving the indemnity. In Germany, the compensation must be paid on a monthly basis.

**III.7 Violation of a non-compete clause:**

In France, an employee who violates a non-compete clause is exposed to different types of legal actions. He loses any right to compensation under the non-compete clause, even if the breach was only temporary. A judge can order the employee to pay his former employer damages and/or order a temporary or permanent injunction from engaging in the competitive activity.

Typically, a non-compete clause will contain a contractual liquidated damages clause, which is enforceable in principle, even though a French judge may modify the amount if it is deemed excessive. Generally speaking, contractual penalties are both in France up to twelve month’s salary. Interestingly, Swiss courts have the same power to reduce excessive penalties (See Article 163, paragraph 3 of the Swiss Code of Obligations). Generally speaking, contractual penalties are allowed both in France and in Switzerland (up to twelve month’s salary in France).
Furthermore, under the French and the Italian employment laws, the new employer of an employee prohibited from working in a particular area or activity by a non-compete clause may also be exposed to damages payable to the former employer if it can be proved that the new employer was aware of the non-compete clause. In addition, a court may order the new employer to terminate the agreement of the employee. If the employee lied to the new employer about his status, such a court-ordered termination will be for gross fault.

CONCLUSION

As they are finding new commercial opportunities overseas, US employers may be tempted to use uniform restrictive covenants used for all employees all over the world. However, each country has developed its own legislation or case law relating to restrictive covenants.

Therefore, US employers should seek local counsel’s advice for drafting and/or dealing with issues concerning non-disclosure and non-competition agreements to ensure compliance with the applicable legal requirements of the particular jurisdiction.

This is all the more true that obligations of the parties under an employment agreement are not limited to those expressed and can also result from legal provisions, collective bargaining agreements and internal regulations.