

Trends and New Developments in Protecting Company Trade Secrets and Human Assets

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Presented by



Peter A. Steinmeyer

Member of the Firm

psteinmeyer@ebglaw.com

312.499.1417



Lauri F. Rasnick

Member of the Firm

lrasnick@ebglaw.com

212-351-4854



Robert D. Goldstein

Member of the Firm

rgoldstein@ebglaw.com

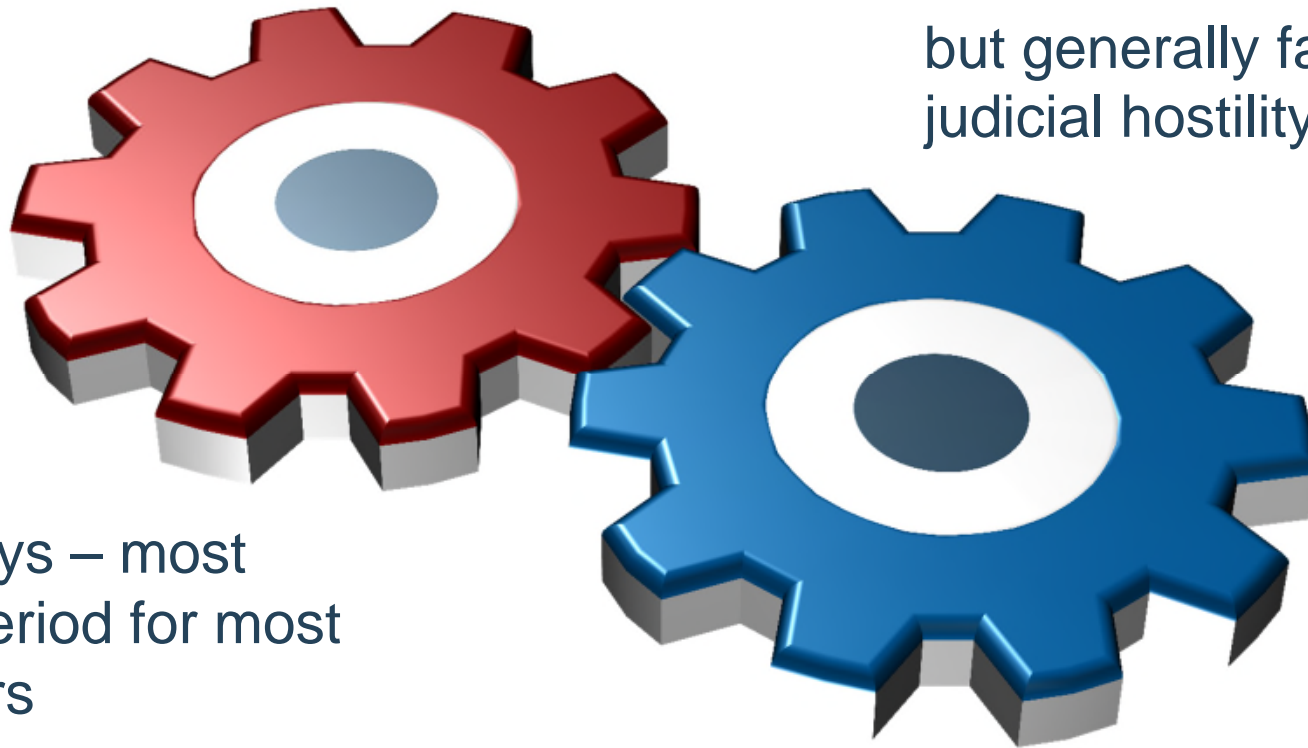
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Growing Judicial and Regulatory Hostility to Restrictive Covenants



- Increased focus on adequacy of consideration
- For injunction today, need breach PLUS dirty hands
- Proposed and actual legislation across the country

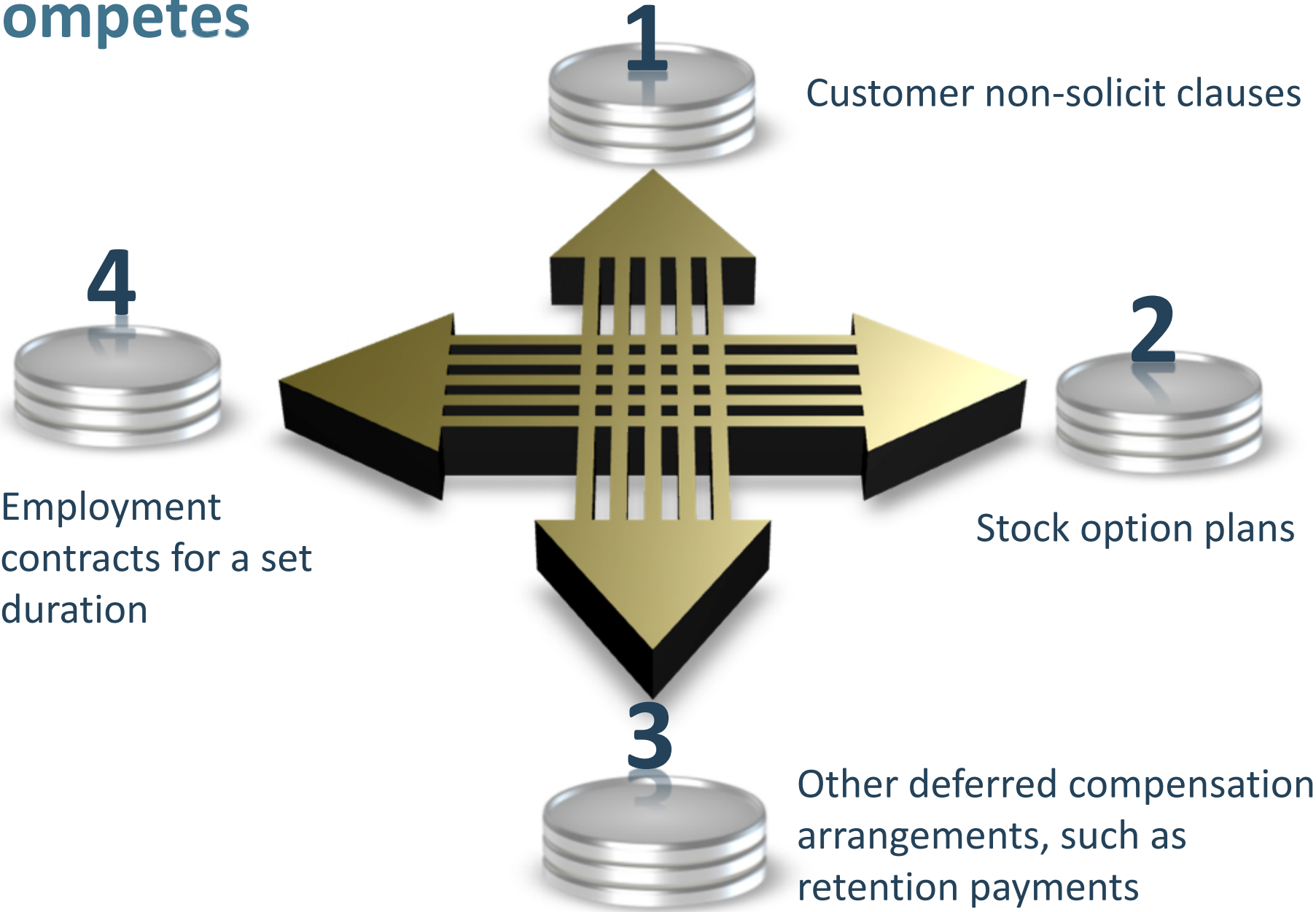
Usage of “Garden Leave” as an Alternative to Traditional Non-Competes



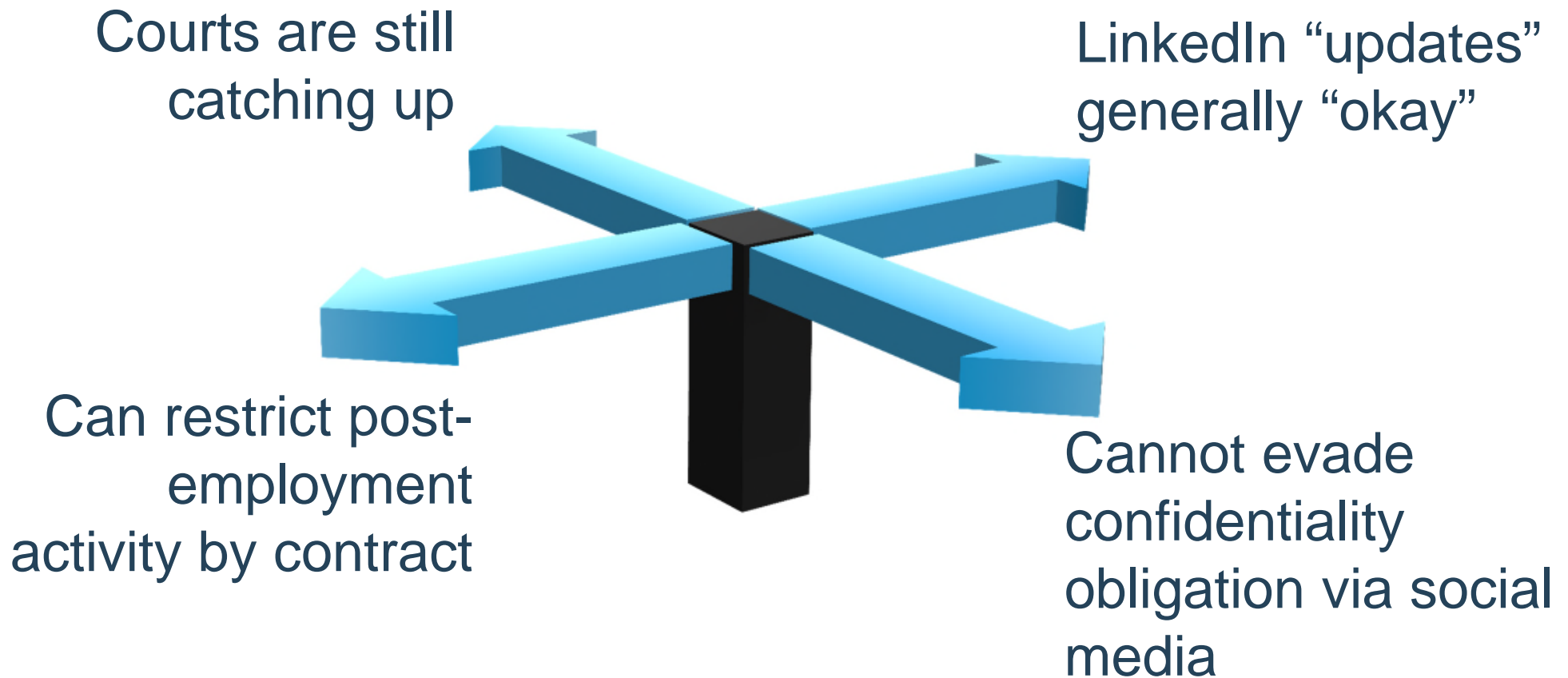
Law not developed,
but generally far less
judicial hostility

30-90 days – most
crucial period for most
employers

Other Alternatives to Traditional Non-Competes



The Intersection of Restrictive Covenants and (Former) Employee Social Media Usage



Regulatory Restrictions on Confidentiality Agreements

- ✓ SEC
- ✓ NLRB
- ✓ EEOC
- ✓ DTSA

Required whistleblower carve-outs

Sharing of compensation information

Required DTSA disclosure

The Practical Impact of the Recently Enacted Federal Defend Trade Secrets Act



Employee Mobility and Trade Secret Protection in California: What Can You Do?



Realistically Identify Trade Secrets and Confidential Information

- Confidentiality and nondisclosure agreements at outset of employment
- Monitoring access/usage at end of employment



Develop a Plan for Employee Departures in California

- Exit interviews: have a plan and a written checklist
- Get a signed certification on departure
- Preserve records and data as appropriate
- Consider “cease and desist” or “reminder” letter



Employment Contracts of Fixed Duration May Have Value

- Breach of contract if violated
- Potential tortious interference claim vs. new employer

When Are Employers Actually Filing Suit Against Former Employees?

- What risk/harm justifies litigation?
- Is a mere breach of contract enough?
- How much evidence is enough?
- What types of evidence are most effective?

EPSTEIN
BECKER
GREEN

Questions?