

Pointing toward tomorrow



An injection needle holds retinal pigment epithelial cells at Advanced Cell Technology in Marlborough.

The financials at Marlborough's Advanced Cell Technology may not look good today, but the company could lead the way in bringing embryonic stem cell treatments to market.

PHOTO/COURTESY

BY EMILY MICUCCI
Worcester Business Journal Staff Writer



n the surface, Marlborough biotechnology company Advanced Cell

Colleges see rebound in endowments

BY MICHAEL NOVINSON
Worcester Business Journal Staff Writer

Endowments at Central Massachusetts colleges have bounced back from the depths of the recession, but schools are still working to make up lost ground.

A booming stock market and low interest rates helped local endowments grow anywhere from 6.6 percent at Fitchburg State University to 19 percent at Worcester State University during the 2013 fiscal year, which ended June 30 of last year, according to data from the National Association of Colleges and University Business Officers (NACUBO).

But endowments at the College of the Holy Cross and Worcester Polytechnic Institute are still lagging at least \$15 million behind pre-recession levels.

"Endowments have been trading water," said Ken Redd, NACUBO's director of research and policy analysis. "Schools are still

Non-compete agreements: Protections? Or barriers?

Lawyers, business groups weigh what governor's proposal would mean for innovation

BY LIVIA GERSHON
Special to the Worcester Business Journal

They're a drag on the economy that keeps great workers from finding the best fit for their skills and creates a barrier for innovative startups. Or, they're one of the only effective protections for companies that have worked hard to develop new technologies and processes.

Non-compete agreements — deals between employers and employees that curb workers' ability to jump to a competitor — are the subject of strong feelings, and Gov. Deval Patrick's recent decision to support new legislation on the subject has inflamed the issue. The legal change, part of an economic growth package the governor proposed earlier this month, would essentially make it impossible to enforce non-compete agreements. The change follows the lead of California, which has a similar law on the books.

Attorney Allyson Cohen of Cohen Law Services LLC in Westborough is encouraged by Patrick's proposal; she sees non-competes as a burden on the Massachusetts economy.

"I think they really are bad public policy because you want these high-tech people; you want them to be able to work," she said. "You want them to be able to have as few restraints on moving from one job to another as possible."

Cohen has seen the agreements become more widespread in recent years, and they have been applied to jobs well outside the technical realms, like radio personalities.

Cohen and other advocates of Patrick's proposal say non-compete agreements, which can keep workers from taking certain jobs for anywhere from a few months to two years after leaving an employer, aren't the only way to protect companies' intellectual property. The legislation would not put an end to non-disclosure deals, which keep former employees from sharing protected company information, or to non-solicitation agreements, which keep them from going after their former employers' clients. In fact, Patrick wants to bring Massachusetts law under the scope of the Uniform Trade Secrets Act, a law that's already in effect in 46 states and that supporters say would strengthen intellectual property protections.

To those who believe in non-disclosure agreements, though, the trouble with those other types of protections is that they're tough to enforce. Andrew Botti, director of the McLane Law Firm in Woburn and a former chairman of the Smaller Business Association of New England, says a salesman or executive who leaves one company for a competitor will almost inevitably — whether intentionally or not — end up disclosing information. But legal battles over disclosure can be complex, with protracted debates over how much the new employer's product is derived from information gained from the old one.

"You've kind of lost the battle if you're

arguing over that level of minutia," Botti said.

Key business group: Protect IP

The Associated Industries of Massachusetts also supports keeping non-disclosure agreements — so much so that it would oppose any economic legislation that included the language Patrick has proposed. "We're adamantly opposed to any legislation that seeks to weaken or harm intellectual property rights," said Bradley MacDougall, vice president for government affairs.

MacDougall said Massachusetts courts, which have established the case-law around non-compete agreements over the past 100 years, "have appropriately

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Other parts of Patrick's bill

Along with eliminating non-competition agreements and adopting the Uniform Trade Secrets Act, Gov. Deval Patrick's proposal offers a variety of other initiatives, including:

- Creating a Global Entrepreneur in Residence Program to allow international students to stay in the state as entrepreneurs.
- Extending eligibility for incentives for companies that create jobs, their capital investment.
- Recapitalizing the state's venture capital investment agency, Mass's small business lender, the Massachusetts Growth Capital Corp.
- Extending the Massachusetts Technology Collaborative's internship/mentoring program.
- Tweaking the research and development tax credit program to give credit to companies that increase their R&D spending.
- Creating a training fund for middle-skill careers in advanced manufacturing and IT.

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Non-compete agreements: Protections? Or restrictions?

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taken a balanced approach." Courts can even modify individual agreements to ensure fair treatment of both employer and employee, he said.

But to Kurt Binder, a partner at the Worcester law firm Seder & Chandler LLP, the complexity of the case law around non-competes is part of the problem. "It's certainly a lucrative area for lawyers," he said. "It's often somewhat unpredictable, based on judges' views."

Binder said that, even if a new employer believes the worker is legally entitled to take a new job, they may not want to face the expense of responding to litigation by the former employer and may choose to rescind a job offer instead.

Frank Hoy, director of the Collaborative for Entrepreneurship & Innovation at Worcester Polytechnic Institute, said it's easy to understand why employers would be concerned about an end to non-competes.

"You wonder what you're doing," he said. "I'm training this person, I'm giving them the skill set they need to go out and become a competitor."

Can ban help boost investment?

But Hoy said the possible downside for employers is outweighed by the potential benefit to the economy from entrepreneurship. He said research shows most new business ideas come from people's work.

"If you work for a company, you develop skills, you develop knowledge, you develop context," he said. "That's what sparks the creation of new ventures. And we want new ventures to be created."

He said employers who see workers leaving to start something new may be able to become investors in the new company, benefitting from their entrepreneurship.

When it comes to employees moving from one company to another within an industry, Hoy said the question is a bit stickier. But he said having laws like the Uniform Trade Secrets Act on the books should curb most employees' willingness to share secrets with a new employer.

Dishonest people are going to be dishonest, and no matter what the law is, they'll find some way around it," he said. "I'd rather give people the freedom to move around." ■



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