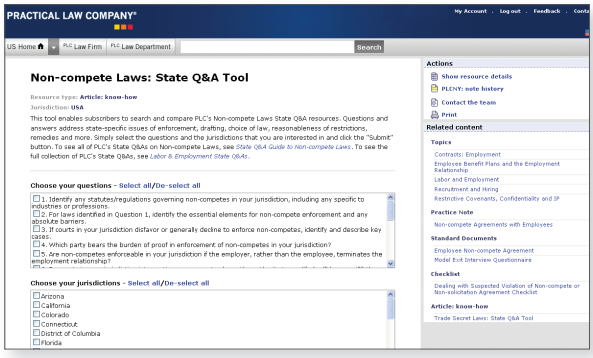
Non-Compete Laws

A STATE BY STATE GUIDE

Non-compete agreements are used by employers to impose professional restrictions on employees after the employment relationship ends. While non-competes are a useful tool for protecting employers' legitimate business interests, including preventing the disclosure of important confidential information, their enforceability is a question of state law and varies from state to state.

PLC's Non-compete Laws Q&As provide a detailed guide to state-specific issues of enforcement, drafting, choice of law, reasonableness of restrictions and remedies. Answers to the various questions can be compared across a number of states. Search Non-compete Laws: State Q&A Tool on our website.

This extract highlights several states and just two of the topics covered in the range of questions from the full Non-compete Laws Q&As. It examines what constitutes a reasonable duration and geographic restriction for an enforceable non-compete in specific states. For the purposes of this extract, the law is stated as of October 1, 2011. The complete, regularly maintained version of each state's Q&A is available on our website.



>> For more information on non-compete agreements, search Non-compete on our website.

>> For additional State Q&A resources on a variety of Labor & Employment topics, search State Q&A on our website.

ILLINOIS

Peter A. Steinmeyer and David J. Clark, Epstein Becker & Green, P.C.

What constitutes a reasonable duration of a non-compete restriction in your jurisdiction?

Illinois courts consider several factors to determine if a non-compete provision is reasonable, including:

- The length of time to get new clients (*Eichmann v. Nat'l Hosp. & Health Care Servs., Inc., 719 N.E.2d 1141 (Ill. App. Ct. 1999)*).
- Hardship to the employee.
- The non-compete provision's effect on the public.

(*Lawrence & Allen, Inc. v. Cambridge Human Res. Group, Inc., 685 N.E.2d 434 (Ill. App. Ct. 1997)*.)

Examples of instances where Illinois courts found non-compete provisions to be reasonable include:

- *Millard Maintenance Service Co. v. Bernero, 566 N.E.2d 379 (Ill. App. Ct. 1990)*. The court held that a two-year non-compete provision for a salesperson was reasonable, because it took the employer a long time to get and maintain clients.
- *Mohanty v. St. John Heart Clinic, 866 N.E.2d 85 (Ill. 2006)*. The court held that a five-year non-compete provision against a doctor was reasonable because the clinic took ten years to establish a client base.

Examples of instances where Illinois courts found non-compete provisions to be unreasonable include:

- *Arpac Corp. v. Murray, 589 N.E.2d 640 (Ill. App. Ct. 1992)*. The court held that a two-year non-compete prohibition was unreasonable and too broad.
- *Unisource Worldwide, Inc. v. Carrara, 244 F. Supp. 2d 977 (C.D. Ill. 2003)*. The court held that a non-compete restriction longer than one year was unreasonable because any confidential information a former employee learned is useless after one year.

What constitutes a reasonable geographic non-compete restriction in your jurisdiction?

Geographic restraints that are broader than necessary to protect the employer's interests are unenforceable (*Arpac Corp. v. Murray, 589 N.E.2d 640 (Ill. App. Ct. 1992)*).

Illinois courts look to see if the geographic restriction is the same as the area where the employer does business (*Cambridge Eng'g, Inc. v. Mercury Partners 90 BI, Inc., 879 N.E.2d 512 (Ill. App. Ct. 2007)*).

VIRGINIA

George B. Breen, Frank C. Morris, Jr. and Casey M. Cosentino, Epstein Becker & Green, P.C.

What constitutes a reasonable duration of a non-compete restriction in your jurisdiction?

Whether the duration of a non-compete is reasonable depends on the facts of each case, as each non-compete agreement must be analyzed by balancing the contract provisions with the parties' specific circumstances (*Omniplex World Services Corp. v. US Investigations Services, Inc., 618 S.E.2d 340, 342 (2005)*; *Mantech Int'l Corp. v. Analex Corp., No. CL-2008-5845, 2008 WL 6759967 (Va. Cir. Ct. July 18, 2008)*).

In general, however, non-competes with shorter durations are more likely to be considered reasonable. Examples of reasonable time restrictions include:

- *Blue Ridge Anesthesia and Critical Care, Inc. v. Gidick*. The court upheld a three-year restriction on medical equipment sales persons working in the territories serviced by their former employer (*389 S.E.2d 467, 469–70 (1990)*).
- *Meissel v. Finley*. The court upheld a five-year restriction on a partner of an insurance company where the time limit was directly related to when the company's insurance policies would come up for renewal (*198 Va. 577 (1956)*).
- *Alan J. Zuccari, Inc. v. Adams*. The court upheld a five-year restriction preventing an employee from soliciting or doing business with the employer's current clients since the employee had gained all of his experience and contacts through his former employment (*No. 143224, 1997 WL 1070565, at *3 (Va. Cir. Ct. Apr. 10, 1997)*).

What constitutes a reasonable geographic non-compete restriction in your jurisdiction?

Whether the geographic restriction in a non-compete is reasonable depends on the facts of each case, as each non-compete agreement must be analyzed by balancing the contract provisions with the parties' specific circumstances (*Omniplex, at 342*).

In general, however, non-competes with smaller geographic limitations are more likely to be considered reasonable. Examples of reasonable geographic restrictions include:

- *New River Media Group, Inc. v. Knighton*. The court upheld a restriction prohibiting a local radio disc jockey from engaging in any business that competed with his former employer within a 60-mile radius of his employer's radio station (the employer's radio station's signal strength was about 60 miles) (*429 S.E.2d 25, 26 (1993)*).
- *Roanoke Eng'g Sales Co., Inc. v. Rosenbaum*. The court upheld a three-year restriction prohibiting an employee from engaging in work similar to that of his employer in the territory covered by his former employer (*290 S.E.2d 882, 885 (1982)*).
- *Blue Ridge*. The court upheld a restriction prohibiting salesmen from working within the territories they had serviced on behalf of their former employer (*Blue Ridge, at 470*).
- *Strategic Resources, Inc. v. Nevin*. The court struck down a non-compete clause without a geographic restriction. Although the employer operated on a worldwide basis, the non-compete was not restricted to the employer's covered areas and therefore the court held that it was unenforceable. (*No. 1:05CV992 (JCC), 2005 WL 3143941 (E.D. Va. Nov. 23, 2005).*)