

Non-Compete Laws: Connecticut

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A Q&A guide to non-compete agreements between employers and employees for private employers in Connecticut. This Q&A addresses enforcement and drafting considerations for restrictive covenants such as post-employment covenants not to compete and non-solicitation of customers and employees. Federal, local, or municipal law may impose additional or different requirements. Answers to questions can be compared across a number of jurisdictions (see Non-Compete Laws: State Q&A Tool).

OVERVIEW OF STATE NON-COMPETE LAW

1. If non-competes in your jurisdiction are governed by statute(s) or regulation(s), identify the state statute(s) or regulation(s) governing:

- Non-competes in employment generally.
- Non-competes in employment in specific industries or professions.

GENERAL STATUTE AND REGULATION

Connecticut has no statute or regulation that governs non-competes generally. Most non-compete agreements in Connecticut are governed by case law.

INDUSTRY- OR PROFESSION-SPECIFIC STATUTE OR REGULATION

Security Guards: Conn. Gen. Stat. Ann. § 31-50a

Conn. Gen. Stat. Ann. § 31-50a governs non-compete agreements in the security industry.

Broadcast Employees: Conn. Gen. Stat. Ann. § 31-50b

Conn. Gen. Stat. Ann. § 31-50b governs non-compete agreements in the broadcast industry.

Physicians: Conn. Gen. Stat. Ann. § 20-14p

Conn. Gen. Stat. Ann. § 20-14p governs non-compete agreements involving physicians.

2. For each statute or regulation identified in Question 1, identify the essential elements for non-compete enforcement and any absolute barriers to enforcement identified in the statute or regulation.

GENERAL STATUTE AND REGULATION

Connecticut does not have any statute or regulation governing non-competes generally.

INDUSTRY- OR PROFESSION-SPECIFIC STATUTE OR REGULATION

Security Guards: Conn. Gen. Stat. Ann. § 31-50a

Employers cannot require certain security guards to enter into an agreement preventing them from engaging in the same or similar job:

- At the same location where they were employed.
- For another employer.
- As a self-employed person.

(Conn. Gen. Stat. Ann. § 31-50a(a).)

The only exception is if the employer proves that the security guard obtained trade secrets (Conn. Gen. Stat. Ann. § 31-50a(a)).

Broadcast Employees: Conn. Gen. Stat. § 31-50b

Broadcast employment contracts cannot prevent employees from being employed in a specific geographic area for a specific time period after their employment is terminated (Conn. Gen. Stat. Ann. § 31-50b(b)(1)).

Physicians: Conn. Gen. Stat. Ann. § 20-14p

A covenant not to compete involving a physician is valid and enforceable only if it is:

- Necessary to protect a legitimate business interest.
- Reasonably limited in time, geographic scope, and practice restrictions
- Otherwise consistent with Connecticut law and public policy.

(Conn. Gen. Stat. Ann. § 20-14p(b)(1).)

A covenant not to compete involving a physician that is entered into, amended, extended, or renewed on or after July 1, 2016 must not:

- Restrict the physician’s activities:
 - for a period longer than one year; or
 - in a geographic region of more than 15 miles from the primary site where the physician practices.
- Be enforceable against a physician if:
 - the employment contract or agreement was not made in anticipation of, or as part of, a partnership or ownership agreement, the agreement expires and is not renewed, and, before the non-compete expires, the employer did not make a bona fide offer to renew the contract on the same or similar terms and conditions; or
 - the employer terminates the employment or contractual relationship, unless the employment or contractual relationship is terminated for cause.

(Conn. Gen. Stat. Ann. § 20-14p(b)(2).)

Every covenant not to compete involving a physician that, on or after July 1, 2016, is entered into, amended, or renewed must be separately and individually signed by the physician (Conn. Gen. Stat. Ann. § 20-14p(b)(3)).

If a contract or agreement contains a covenant not to compete involving a physician, and that covenant is rendered void and unenforceable, the remaining provisions in the contract or agreement remain in force, including provisions requiring the payment of damages resulting from any injury suffered due to termination of the contract or agreement (Conn. Gen. Stat. Ann. § 20-14p(c)).

COMMON LAW

To be enforceable, the restrictions of a non-compete agreement must be reasonable. Connecticut courts consider the following factors to determine the reasonableness of a non-compete agreement:

- The length of time of the restriction.
- The geographic scope.
- Fairness of the protection provided to the employer.
- The extent of the restraint on the employee’s ability to pursue the employee’s occupation.
- The extent of any interference with the public interest.

(*Branson Ultrasonics Corp. v. Stratman*, 921 F. Supp. 909, 913 (D. Conn. 1996).)

ENFORCEMENT CONSIDERATIONS

3. If courts in your jurisdiction disfavor or generally decline to enforce non-competes, please identify and briefly describe the key cases creating relevant precedent in your jurisdiction.

There are no cases generally declining to enforce non-competes.

4. Which party bears the burden of proof in enforcement of non-competes in your jurisdiction?

The employer has the burden to prove that a non-compete has been breached. The party challenging enforcement of the non-compete has the burden to demonstrate the unreasonableness of a non-compete’s restriction (*Pediatric Occupational Therapy Servs., Inc. v. Town of Wilton*, 2004 WL 886394, at *9 (Conn. Super. Ct. Apr. 7, 2004)).

5. Are non-competes enforceable in your jurisdiction if the employer, rather than the employee, terminates the employment relationship?

Non-competes are enforceable and valid even if the employer terminates the employment relationship (*Gartner Group, Inc. v. Mewes*, 1992 WL 4766 (Conn. Super. Ct. Jan. 3, 1992)).

The breach of an employment contract by an employer is a recognized defense to the enforcement of a non-compete agreement (*Merryfield Animal Hosp. v. Mackay*, 2002 WL 31000298, at *3 (Conn. Super. Ct. July 31, 2002)).

BLUE PENCILING NON-COMPETES

6. Do courts in your jurisdiction interpreting non-competes have the authority to modify (or “blue pencil”) the terms of the restrictions and enforce them as modified?

Connecticut courts can modify or blue pencil the terms of the restrictions and enforce them as modified. However, the non-compete agreement must state the intent to make the terms severable (*Gartner Group, Inc.*, 1992 WL 4766, at *5).

Connecticut courts do not blue pencil if the terms are not severable. For example, a geographic restriction of a 50-mile radius, where separate towns were not listed, could not be blue-penciled out of an employment contract because that would leave no area restriction (*Timenterial, Inc. v. Dagata*, 277 A.2d 512, 514-15 (Conn. Super. Ct. 1971)).

Connecticut courts do not narrow an overbroad geographic term if there is no clause in the agreement allowing for blue penciling (*Braman Chem. Enters., Inc. v. Barnes*, 2006 WL 3859222, at *9 (Conn. Super. Ct. Dec. 12, 2006)).

CHOICE OF LAW PROVISIONS

7. Will choice of law provisions contained in non-competes be honored by courts interpreting non-competes in your jurisdiction?

Courts in Connecticut generally uphold choice of law provisions in non-competes, unless either:

- The chosen state has no significant relationship to the parties and there is no other reasonable basis for the parties’ choice.
- The application of the chosen state’s law would violate Connecticut’s public policy.

(*Elizabeth Grady Face First, Inc. v. Escavich*, 321 F. Supp. 2d 420, 423 (D. Conn. 2004); *Riverside Millwork, Co., v. Pahl*, 2006 WL 224174, at *5 (Conn. Super. Ct. Jan. 6, 2006).)

If there is no effective choice of law by the parties, Connecticut courts use the factors set out in Section 188 of the Restatement (Second) of Conflict of Laws to determine whether a state has a more significant interest than the chosen state, including:

- The place where the contract was:
 - made;
 - negotiated; and
 - performed.
- The location of the subject matter of the contract.
- The domicile, residence, nationality, place of incorporation, and place of business of the parties.

(*Reichhold Chems., Inc. v. Hartford Accident & Indem. Co.*, 750 A.2d 1051, 1055 n. 4 (Conn. 2000).)

If the place of negotiating the contract and the place of performance are in the same state, the local law of this state is usually applied (*Reichhold Chems., Inc.*, 750 A.2d at 1055 n.4).

REASONABLENESS OF RESTRICTIONS

8. What constitutes sufficient consideration in your jurisdiction to support a non-compete agreement?

A non-compete signed at the start of employment is sufficient consideration to support an otherwise enforceable non-compete (see *Braman Chemical Enterprises, Inc. v. Barnes*, 2006 WL 3859222, at *4 (Conn. Super. Ct. (Dec. 12, 2006)).

Continued employment is not sufficient consideration to support a non-compete agreement in Connecticut entered into after the beginning of employment. Continued employment must be accompanied by new consideration, for example:

- Promotion.
- Enhanced compensation.
- Employment in a different capacity.

(*Van Dyck Printing Co. v. DiNicola*, 648 A.2d 898, 901 (Conn. Super. Ct. 1993); *Torrington Creamery v. Davenport*, 12 A.2d 780, 783 (Conn. 1940).)

The decrease in the term of a non-compete agreement from two years to one year has been held to be sufficient consideration for a non-compete agreement signed after the beginning of employment (*Sylvan R. Shemitz Designs, Inc. v. Brown*, 2013 WL 6038263, at *6 (Conn. Super. Ct. Oct. 23, 2013)).

In *Thoma v. Oxford Performance Materials*, the Connecticut Appellate Court upheld a decision enforcing the first of two employment agreements an employee entered into with her employer. The court found that the second employment agreement was not supported by consideration when it eliminated provisions for notice and post-termination compensation and modified the non-compete clause to an indefinite term. Continued employment was not adequate consideration to support the second agreement. (100 A.3d 917, 928 (Conn. App. 2014).)

There is a developing line of Connecticut cases holding that continued employment is adequate consideration to support

non-compete covenants with at-will employees because of the employer's forbearance from exercising the legal right to terminate the employee at-will (*Discoverytel Spc., Inc. v. Pinho*, 2010 WL 4515414, at *4 (Conn. Super. Ct. Oct. 14, 2010); *Sartor v. Town of Manchester*, 312 F. Supp. 2d 238, 244-45 (D. Conn. 2004)).

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

Connecticut courts consider time and geographic restriction together. A restriction covering a large geographic area may be reasonable if the time restriction is brief. A small geographic area may be reasonable for a longer duration. (*Van Dyck Printing Co.*, 648 A.2d at 901-902.)

Time restrictions from one to five years have been enforced if they fairly protect the interests of both parties in time and geography. The more specific the restriction, the more likely it will be enforced.

For example, in:

- *Scott v. General Iron & Welding Co.*, a non-compete restricted an employee from managing a business of fabricating and welding metals in the same state for five years. The court determined that the duration of the non-compete was reasonable because of the employee's knowledge of the employer's customer list (368 A.2d 111, 116 (Conn. 1976)).
- *Aetna Retirement Services, Inc. v. Hug.*, the court granted a temporary injunction of six months restricting employment worldwide because of the employee's knowledge of trade secrets and his ability to continue to pursue an occupation (1997 WL 396212, at *11 (Conn. Super. Ct. June 18, 1997)).
- *Ives Bros., Inc. v. Keeney*, a non-compete restricted an independent contractor heating technician from working within a 20-mile radius of the employer's office or in the county where the office was located for five years. The court determined that the technician acted in bad faith when he solicited business and directly competed with the employer in the same region. The court granted an injunction upholding the non-compete provision (2000 WL 35775696, at *10 (Conn. Super. Ct. Oct. 27, 2009)).
- *Building Inspections, Inc. v. Paris*, a non-compete of two years unbounded by any geographic term and barring work for any competitor was not enforceable (1997 WL 97334, at *3 (Conn. Super. Ct. Feb. 20, 1997)).

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

Connecticut courts consider time and geographic restriction together. A restriction covering a large geographic area may be reasonable if the time restriction is brief. A small geographic area may be reasonable for a longer duration. (*Van Dyck Printing Co.*, 648 A.2d at 901-902.) For examples of reasonable geographic restrictions, see Question 9.

In *Xplore Technologies Corp. v. Killion*, the court enforced a non-competition clause that had no specified geographic requirement and held that the geographic area was defined by limited potential customers and the uniqueness of the product at issue (2010 WL 4277765, at *5-6 (Conn. Super. Ct. Oct. 8, 2010)).

11. Does your jurisdiction regard as reasonable non-competes that do not include geographic restrictions, but instead include other types of restrictions (such as customer lists)?

Connecticut courts have upheld as reasonable non-competes that do not include geographic restrictions, but instead include other types of restrictions. For example, in:

- *Robert S. Weiss & Assocs., Inc. v. Wiederlight*, the court upheld a non-compete that barred the employee from soliciting the employer's accounts when he left employment (546 A.2d 216, 219-20 (Conn. 1988)).
- *Edge Technology Services, Inc. v. Worley*, the court upheld a non-compete restricting the employee from working for any client or former client that they had performed services for the year before termination (2005 WL 1971109 (Conn. Super. Ct. Jul. 5, 2005)).
- *Drummond American LLC v. Share Corp.*, the court upheld a non-compete that restricted work with 26 customers serviced by the employee during the last year of employment (2009 WL 3838800 (D. Conn. Nov. 12, 2009)).
- *Webster Ins. Inc. v. Levine*, the court did not enforce a non-solicitation barring the former employee from accepting business from or servicing accounts from the former employer's client. The court held that the non-solicitation was against the public interest because it operated as an anti-sales agreement limiting third parties' choices as to who they could do business with (2007 WL 4733105, at *8 (Conn. Super. Ct. Dec. 21, 2007)).
- *Sylvan R. Shemitz Designs, Inc. v. Brown*, the court found that a non-compete agreement that prohibited a former employee from any employment in the same general business as his former employer, regardless of the importance of the position or the relatedness of the duties, was unenforceable because it was overly broad and unreasonable (2013 WL 6038263, at *8-9 (Conn. Super. Ct. Oct. 23, 2013)).
- *BTS, USA, Inc. v. Executive Perspectives, LLC*, the court held that a former employee did not breach his non-compete agreement by updating his employer on LinkedIn and not changing or deleting connections he gained during his previous employment. The court held that absent an explicit provision in the non-compete agreement restricting a former employee's usage of social media, the court will not read such restrictions into a non-compete agreement. (2014 WL 6804545, at *12 (Conn. Super. Ct. Oct. 16, 2014).)

12. Does your jurisdiction regard as reasonable geographic restrictions (or substitutions for geographic restrictions) that are not fixed, but instead are contingent on other factors?

Courts have upheld unfixed geographic restrictions based on:

- Limited potential customers.
- Uniqueness of product.
- Employer's accounts that existed when the employee left employment.
- Clients that the employee performed services for the previous year.

(See Questions 10 and 11.)

13. If there is any other important legal precedent in the area of non-compete enforcement in your jurisdiction not otherwise addressed in this survey, please identify and briefly describe the relevant cases.

Connecticut has a pre-judgment remedy statute that can be used to recover damages for breach of a non-compete agreement (Conn. Gen. Stat. Ann. §§ 52-278c and 52-278d; *Webster Ins., Inc.*, 2007 WL 4733105, at *8).

REMEDIES

14. What remedies are available to employers enforcing non-competes?

Damages are measured by the loss suffered by the enforcing party, not by the breaching party's gains (*Robert S. Weiss & Assocs., Inc.*, 546 A.2d at 226).

Liquidated damages may be collected if they are not a penalty (*Daniel V. Keane Agency, Inc. v. Butterworth*, 1995 WL 93387, at *8 (Conn. Super. Ct. Feb. 22, 1995)).

Injunctive relief may be granted for breach of a non-compete agreement if the enforcing party can show that the former employee is in a position to cause the enforcing party irreparable harm. Fear of harm is not sufficient to support a finding of irreparable harm. (*Sylvan R. Shemitz Designs, Inc.*, 2013 WL 6038263, at *10-11.)

15. What must an employer show when seeking a preliminary injunction for purposes of enforcing a non-compete?

When seeking a preliminary injunction to enforce a non-compete, the employer must show that:

- The non-compete is reasonable.
- The employer has an interest deserving of protection and will suffer damage.
- Irreparable harm has been done.
- There is a lack of an adequate remedy at law.

(*Hart, Nininger & Campbell Assocs., Inc. v. Rogers*, 548 A.2d 758, 765 (Conn. App. Ct. 1988).)

OTHER ISSUES

16. Apart from non-competes, what other agreements are used in your jurisdiction to protect confidential or trade secret information?

Non-solicitation agreements are analyzed as non-compete agreements (*Spitz, Sullivan Wachtel & Falcetta v. Murphy*, 1991 WL 112718, at *6 (Conn. Super. Ct. June 13, 1991); see Question 11).

Confidentiality agreements are analyzed as non-compete agreements (*Hart, Nininger & Campbell Assocs., Inc.*, 548 A.2d at 767).

17. Is the doctrine of inevitable disclosure recognized in your jurisdiction?

Federal courts interpreting Connecticut law have held that Connecticut courts recognize the doctrine of inevitable disclosure. In *Branson Ultrasonics Corp.*, the US District Court for the District of Connecticut determined that there was a high degree of similarity

between the employee's former and current employment. This similarity made it likely that trade secrets and other confidential information would be used and disclosed by the employee in the course of his new work. The court granted a preliminary injunction upholding a non-compete to prevent disclosure of trade secrets. (*Branson Ultrasonics Corp.*, 921 F. Supp. at 913-14.)

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