



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.

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 AND REGULATION

Security Guards: Connecticut General Statute § 31-50a

Section 31-50a of the Connecticut General Statutes governs non-compete agreements in the security industry.

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

Section 31-50b of the Connecticut General Statutes governs non-compete agreements in the broadcast industry.

For the text of the Connecticut General Statutes, see the Connecticut General Assembly Official Legislative *website*.

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

There is no statute or regulation that governs non-competes generally. The essential elements for non-compete enforcement are established by case law.

Connecticut courts consider:

- Length of time of the restriction.
- Geographic scope.
- Fairness of the protection provided to the employer.

- How much the non-compete restricts the employee from pursuing their occupation.
- Extent of any interference with the public interest.

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

INDUSTRY- OR PROFESSION-SPECIFIC STATUTE AND REGULATION

Security Guards: Connecticut General Statute § 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.

The only exception to this is if the employer proves that the security guard obtained trade secrets.

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.

For the text of the Connecticut General Statutes, see the Connecticut General Assembly Official Legislative *website*.

ENFORCEMENT

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 employee has the burden to demonstrate the unreasonableness of a non-compete's restriction. (*Pediatric Occupational Therapy Services, Inc. v. Town of Wilton*, 37 Conn. L. Rptr. 114 (Conn. Super. Ct. 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. January 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 Hospital v. Mackay*, 2002 WL 31000298 (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. v. Mewes*, 1992 WL 4766 (Conn. Super. Ct. January 3, 1992)).

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 (Conn. Super. Ct. 1971).)

Courts do not narrow an overbroad geographic term if there is no clause in the agreement allowing for blue penciling (*Braman Chemical Enterprises, Inc. v. Barnes*, 2006 WL 3859222 (Conn. Super. Ct. December 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.
- 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 (D. Conn. 2004) and *Riverside Millwork, Co., Inc. v. Pahl*, 2006 WL 224174 (Conn. Super. Ct. January 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.
- Place where the contract was negotiated.
- Place where the contract was performed.
- Location of the subject matter of the contract.
- Domicile, residence, nationality, place of incorporation and place of business of the parties.

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 Chemicals, Inc. v. Hartford Accident & Indemnity Co.*, 750 A.2d 1051 (Conn. 2000).)

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

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 combined with at least one of the following to be sufficient consideration:

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

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

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. v. DiNicola*, 648 A.2d 898 (Conn. Super. Ct. 1993).)

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 examples of these types of restrictions, see:

- *May v. Young*, 2 A.2d 385 (Conn. 1938). The court upheld a non-compete restricting an employee from working for the employer's clients for two years. The court determined that this non-compete did not restrict opportunities for employment or pursuit of occupation, or deprive the public of industry or services. Also, it was not invalid on the grounds of public policy.
- *Scott v. General Iron & Welding Co., Inc.*, 368 A.2d 111 (Conn. 1976). 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.
- *Aetna Retirement Services, Inc. v. Hug*, 1997 WL 396212 (Conn. Super. Ct. June 18, 1997). 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.
- *Ives Bros., Inc. v. Keeney*, 2000 WL 35775696 (Conn. Super. Ct. October 27, 2009). 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.
- *Building Inspections, Inc. v. Paris*, 1997 WL 97334 (Conn. Super. Ct. February 20, 1997). A non-compete of two years unbounded by any geographic term and barring work for any competitor was not enforceable.

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. v. DiNicola*, 648 A.2d 898 (Conn. Super. Ct. 1993).)

For examples, see *Question 9*.

Another example can be seen in *Xplore Techs. Corp. v. Killion*, 2010 WL 4277765 (Conn. Super. Ct. October 8, 2010). In this case, 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.

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)?

In Connecticut, a non-compete that barred the employee from soliciting the employer's accounts when he left employment was reasonable (*Robert S. Weiss & Associates, Inc. v. Wiederlight*, 546 A.2d 216 (Conn. 1988)).

For other examples of these types of restrictions, see:

- *Edge Tech. Servs., Inc. v. Worley*, 2005 WL 1971109 (Conn. Super. Ct. July 5, 2005). 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.
- *Drummond American LLC v. Share Corp.*, 2009 WL 3838800 (D. Conn. November 12, 2009). The court upheld a non-compete that restricted work with 26 customers serviced by the employee during the last year of employment.
- *Webster Ins. Inc. v. Levine*, 2007 WL 4733105 (Conn. Super. Ct. December 21, 2007). 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.

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 (*Conn. Gen. Stat. § 52-278c and § 52-278d (2011)*) that can be used to recover damages for breach of a non-compete agreement (*Webster Ins. Inc. v. Levine*, 2007 WL 4733105 (Conn. Super. Ct. December 21, 2007)).

For the text of the Connecticut General Statutes, see the Connecticut General Assembly Official Legislative *website*.

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 and Associates, Inc. v. Wiederlight*, 546 A.2d 216 (Conn. 1988)).

Liquidated damages may be collected if they are not a penalty (*May v. Young*, 2 A.2d 385 (Conn. 1938)).

15. What must an employer show when seeking a preliminary injunction for purposes of enforcing 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 and Campbell Associates, Inc. v. Rogers*, 548 A.2d 758 (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 (Conn. Super. Ct. June 13, 1991)). For an example, see *Question 11*.

Confidentiality agreements are analyzed as non-compete agreements (*Hart, Nininger and Campbell Associates, Inc. v. Rogers*, 548 A.2d 758 (Conn. App. Ct. 1988)).

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

Connecticut courts do recognize the doctrine of inevitable disclosure (*Branson Ultrasonics Corp. v. Stratman*, 921 F.Supp. 909 (D. Conn. 1996)). In *Branson Ultrasonics*, the court 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.

The doctrine of inevitable disclosure was also applied in *Continental Group, Inc. v. Kinsley*, 422 F.Supp. 838 (D. Conn. 1976). In this case, the employee went to work for a major competitor developing an identical product. The court determined that the employee would have frequent opportunities for disclosure of trade secrets concerning the development of the new product. Therefore, a risk of irreparable injury was established and a preliminary injunction was granted.

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