

Non-Compete Laws: Massachusetts

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A Q&A guide to non-compete agreements between employers and employees for private employers in Massachusetts. 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

The Massachusetts Noncompetition Agreement Act (M.G.L. c. 149, § 24L) governs non-compete agreements generally for agreements made on or after October 1, 2018.

Industry- or Profession-Specific Statute or Regulation

Lawyers: Mass. R. Prof. C. 5.6

Massachusetts Rules of Professional Conduct Rule 5.6 governs non-compete agreements in the legal industry.

Physicians: M.G.L. c. 112, § 12X

Massachusetts General Laws Chapter 112, Section 12X addresses non-compete agreements for physicians licensed by the Massachusetts [Board of Registration in Medicine](#).

Nurses: M.G.L. c. 112, § 74D

Massachusetts General Laws Chapter 112, Section 74D governs non-compete agreements for nurses certified by the Massachusetts [Board of Registration in Nursing](#).

Social Workers: M.G.L. c. 112, § 135C

Massachusetts General Laws Chapter 112, Section 135C addresses non-compete agreements for social workers licensed under the Massachusetts [Board of Registration for Social Workers](#).

Broadcasters: M.G.L. c. 149, § 186

Massachusetts General Laws Chapter 149, Section 186 governs non-compete agreements for employees in the broadcasting industry.

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

The Massachusetts Noncompetition Agreement Act (MNAA) governs non-compete agreements generally (M.G.L. c. 149, § 24L). The act is effective for agreements made on or after October 1, 2018. Under the MNAA, to be valid and enforceable a non-compete agreement must:

- Be in writing and signed by both the employer and the employee.



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- Expressly state that the employee may consult with an attorney before signing.
- If made before employment begins, be provided to the employee by the earlier of either:
 - the formal offer of employment; or
 - at least ten business days before the employment begins.
- If made after employment begins but not in connection with termination of employment, be:
 - supported by fair and reasonable consideration independent from continued employment; and
 - provided to the employee at least ten business days before the agreement is effective.
- Be no broader than necessary to protect one or more of the following legitimate interests of the employer:
 - trade secrets;
 - confidential information that is not a trade secret; or
 - the employer's goodwill.
- Not extend for longer than one year from the date the employment ends, or longer than two years if the employee:
 - breached their fiduciary duty to the employer; or
 - unlawfully took the employer's property, either physically or electronically.
- Be reasonable in geographic scope. An agreement is presumed reasonable if it is limited to regions where the employee provided services or had a material presence or influence within the last two years of employment.
- Be reasonable in the scope of prohibited activities. An agreement is presumed reasonable if it is limited to the specific services provided by the employee within the last two years of employment.
- Be supported by a garden leave clause or other express, mutually-agreed consideration for the duration of the restricted period.
- Be consonant with public policy.

(M.G.L. c. 149, § 24L(b).)

Employers may not enforce non-compete agreements against:

- An employee who is classified as nonexempt under the Fair Labor Standards Act (29 U.S.C. §§ 210 to 219).
- Undergraduate or graduate students participating in internships or short-term employment.

- Employees that have been terminated without cause or laid off.
- Employees age 18 or younger.

(M.G.L. c. 149, § 24L(c).)

Under the MNAA, covered non-compete agreements include forfeiture for competition agreements, but do not include:

- Covenants not to solicit or hire the employer's employees.
- Covenants not to solicit or transact business with the employer's customers, clients, or vendors.
- Non-compete agreements made in connection with the sale of a business or substantially all of the operating assets of a business, if the restricted party:
 - is an owner, member, or partner of the sold entity; and
 - will receive significant consideration or benefit from the sale.
- Non-compete agreements made outside of an employment relationship.
- Forfeiture agreements.
- Non-disclosure or confidentiality agreements.
- Invention assignment agreements.
- Garden leave clauses.
- Non-compete agreements made in connection with the employee's termination where the employer expressly gives the employee seven business days to rescind acceptance.
- Agreements where the employee agrees to not apply for reemployment with the same employer after termination.

(M.G.L. c. 149, § 24L(a).)

Industry- or Profession-Specific Statute or Regulation

Lawyers: Mass. R. Prof. C. 5.6

A lawyer cannot offer or make:

- A partnership or employment agreement that restricts lawyers from practicing law after ending the relationship, except for an agreement about retirement benefits.
- A settlement agreement that restricts lawyers from practicing law.

(Mass. R. Prof. C. 5.6.)

Physicians: M.G.L. c. 112, § 12X

A physician's employment or partnership agreement may not have a non-compete provision (M.G.L. c. 112, § 12X).

Nurses: M.G.L. c. 112, § 74D

A nurse's employment or partnership agreement may not have a non-compete provision (M.G.L. c. 112, § 74D).

Social Workers: M.G.L. c. 112, § 135C

A non-compete provision in a social worker's employment or partnership agreement is void (M.G.L. c. 112, § 135C).

Broadcasters: M.G.L. c. 149, § 186

A non-compete provision is void in an employment contract for an employee in the broadcasting industry. Violators are liable for the affected party's reasonable attorneys' fees and costs. (M.G.L. c. 149, § 186.)

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.

Massachusetts courts generally disfavor non-compete agreements because:

- The employee has a weaker bargaining position.
- The employee is likely not to pay attention to the potential future loss of livelihood.

(*Kroeger v. Stop & Shop Cos.*, 432 N.E.2d 566, 568 (Mass. App. Ct. 1982); *KNF&T Staffing, Inc. v. Muller*, 2013 WL 7018645, at *3 (Mass. Super. Ct. Oct. 24, 2013).)

Employer's Protectable Interest

Massachusetts common law concerning non-competes has been substantially codified with the passage of the Massachusetts Noncompetition Agreement Act (MNAA), effective for agreements made on or after October 1, 2018 (M.G.L. c. 149, § 24L). Under the statute, a non-compete must protect at least one of the following legitimate business interests of the employer:

- Trade secrets.
- Confidential information that is not a trade secret.
- The employer's goodwill.

(M.G.L. c. 149, § 24L(b)(iii).)

A non-compete agreement may be presumed necessary where the legitimate business interest cannot be adequately protected by an alternative restrictive covenant, including:

- A non-solicitation agreement.
- A non-disclosure agreement.
- A confidentiality agreement.

(M.G.L. c. 149, § 24L(b)(iii).)

These interests align with those found protected by Massachusetts courts prior to the passage of the MNAA. For example, courts have found the following information protectible as legitimate business interests:

- Confidential information, such as business plans and marketing strategies (*Marcam Corp. v. Orchard*, 885 F. Supp. 294, 297 (D. Mass. 1995)(applying Massachusetts law)).
- Customer goodwill (*Marine Contractors Co. v. Hurley*, 310 N.E.2d 915, 920-21 (Mass. 1974); *Zona Corp. v. McKinnon*, 2011 WL 1663094, at *2 (Mass. Super. Ct. Mar. 14, 2011)).

Massachusetts courts have also found that non-compete covenants may not be used to:

- Protect the employer from ordinary competition, which is not a legitimate business interest (*Marine Contractors*, 310 N.E.2d at 920-21; *Maine Pointe, LLC v. Starr*, 2011 WL 379279, at *3 (D. Mass. Feb. 3, 2011)(applying Massachusetts law)).
- Restrain free competition (*Routhier Placement Specialists, Inc. v. Brown*, 2002 WL 31248032, at *1 (Mass. Super. Ct. Sept. 26, 2002)).
- Deprive an employee of the opportunity to use acquired skills and knowledge to secure other employment (*Club Aluminum Co. v. Young*, 160 N.E. 804, 806 (Mass. 1928); *Routhier*, 2002 WL 31248032, at *1).

An employee may carry away and use the general skill and knowledge acquired during the course of the employment (*Dynamics Research Corp. v. Analytic Sciences Corp.*, 400 N.E.2d 1274, 1282 (Mass. App. Ct. 1980)).

Material Change

A non-compete agreement must have reasonable consideration, for which the employment itself is sufficient for pre-employment agreements (*Stone Legal Res. Group, Inc. v. Glebus*, 2002 WL 35654421, at *5 (Mass. Super. Ct. 2002)). Before the passage of the MNAA, Massachusetts courts were unclear on whether non-competes entered

into after hire require additional consideration, and the issue was never resolved by the Supreme Judicial Court (see *Wilkinson v. QCC, Inc.*, 2001 WL 1646491, at *1 (Mass. App. Ct. Dec. 21, 2001)).

However, the MNAA now requires, for agreements made on or after October 1, 2018, that a non-compete agreement:

- Be supported by fair and reasonable consideration independent from continued employment if made after employment has begun.
- Expressly state, regardless of when made, that the employee may consult with an attorney prior to signing the agreement.

(M.G.L. c. 149, § 24L(b)(i), (ii).)

The law MNAA does not address the effect of a material change in the employment relationship on an existing non-compete agreement. However, several Massachusetts trial courts and federal courts applying Massachusetts law have refused to enforce a non-compete agreement where both:

- A material change has been made in the employment relationship.
- The employee has not executed a new non-compete agreement.

(See *NuVasive, Inc. v. Day*, 954 F.3d 439, 444 (1st Cir. 2020); *Muller*, 2013 WL 7018645 at *3 n.4.)

For example, the Massachusetts Superior Court held that a change in an employee's compensation structure or methodology creates a material change requiring the execution of a new non-compete agreement (*Grace Hunt IT Solutions, LLC v. SIS Software, LLC*, 2012 WL 1088825, at *4 (Mass. Super. Ct. Feb. 14, 2012)). The *Grace Hunt* court also stated that even asking an employee to sign a new non-compete agreement implicitly acknowledges a material change in the employment relationship (*Grace Hunt*, 2012 WL 1088825 at *4).

A material change may include:

- A title change.
- A change in pay structure.
- An increase in authority.
- A change in the focus of the employee's work.

(*Intepros, Inc. v. Athy*, 2013 WL 2181650, at *3 (Mass. Super. Ct. May 5, 2013).)

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

Under Massachusetts law, the employer has the burden of proof to enforce a non-compete (*Lunt v. Campbell*, 2007 WL 2935864, at *2 (Mass. Super. Ct. Sept. 24, 2007)).

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

In Massachusetts, whether an employee was terminated or voluntarily resigned is irrelevant when enforcing non-compete agreements, unless the non-compete provides otherwise (*Kroeger*, 432 N.E.2d at 572). Employers may not enforce non-compete agreements entered into on or after October 1, 2018 against employees who have been:

- Terminated without cause.
- Laid off.

(M.G.L. c. 149, § 24L(c).)

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?

Although the Massachusetts courts never specifically adopted the blue pencil approach, they may reform an unreasonable non-compete to the extent that the modification is reasonable (*Cheney v. Automatic Sprinkler Corp. of Am.*, 385 N.E.2d 961, 965 (Mass. 1979); *Kroeger*, 432 N.E.2d at 568; *Inner-Tite Corp. v. Brozowski*, 2010 WL 3038330, at *13 (Mass. Super. Ct. April 14, 2010)).

For agreements entered into on or after October 1, 2018, the Massachusetts Noncompetition Agreement Act specifically allows courts the discretion to reform or revise a non-compete agreement to render it valid, but only to the extent necessary to protect the employer's applicable legitimate business interests (M.G.L. c. 149, § 24L(d); see Question 3: Employer's Protectable Interest).

Choice of Law Provisions

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

Massachusetts courts have generally enforced choice of law provisions (*Morris v. Watsco, Inc.*, 433 N.E.2d 886, 888 (Mass. 1982)). However, they do not enforce provisions that violate a fundamental policy of a state with a materially greater interest in the case (*Aspect Software, Inc. v. Barnett*, 787 F. Supp. 2d 118, 125 (D. Mass. 2011) (interpreting Massachusetts law); *Shipley Co. v. Clark*, 728 F. Supp. 818, 825 (D. Mass. 1990)).

Massachusetts law generally applies if, at termination, the employee was either:

- A Massachusetts resident.
- Working in Massachusetts.

Under the Massachusetts Noncompetition Agreement Act (MNAA), for non-compete agreements entered into on or after October 1, 2018, courts will not enforce any choice-of-law provision if both:

- The provision has the effect of avoiding the requirements under the MNAA.
- The employee is or has been for at least 30 days prior to termination:
 - a resident of Massachusetts; or
 - employed in Massachusetts.

Additionally, the MNAA requires any civil action relating to a non-compete agreement subject to the act to be brought either:

- In the county where the employee resides.
- In Suffolk county, under the exclusive jurisdiction of the superior court's [Business Litigation Session](#), if agreed on by both the employer and employee.

(M.G.L. c. 149, § 24L(e), (f).)

Reasonableness of Restrictions

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

Massachusetts courts have determined that the employment itself is sufficient consideration for a non-compete agreement signed at the beginning of the employment relationship (*Stone Legal*, 2002 WL 35654421, at *5).

For agreements signed after hire, continued employment is **not** sufficient to constitute reasonable, independent consideration as required under the Massachusetts Noncompetition Agreement Act (applicable to non-compete agreements made after October 1, 2018) (M.G.L. c. 149, § 24L(b)(ii)).

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

The Massachusetts Noncompetition Agreement Act (MNAA), applicable to agreements made on or after October 1, 2018, prohibits a restricted period of longer than one year from the date the employment ends. A restricted period may extend to a maximum of two years only if the employee:

- Breached their fiduciary duty to the employer.
- Has unlawfully taken the employer's property, either physically or electronically.

(M.G.L. c. 149, § 24L(b)(iv).)

Before the MNAA was enacted, under Massachusetts common law, courts enforced one- to two-year agreements and were more likely to enforce one-year restrictions (see *IKON Office Solutions, Inc. v. Belanger*, 59 F. Supp. 2d 125, 129 (D. Mass. 1999); *Empirix, Inc. v. Ivanov*, 2011 WL 3672038, at *3 (Mass. Super. Ct. May 17, 2011); *Boulanger v. Dunkin' Donuts Inc.*, 815 N.E.2d 572, 579 (2004)).

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

Under the Massachusetts Noncompetition Agreement Act (MNAA), applicable to agreements made on or after October 1, 2018, a geographic restriction is presumed reasonable when the reach is limited to regions where, for the last two years of employment, the employee:

- Provided services.
- Had a material presence or influence.

(M.G.L. c. 149, § 24L(b)(v).)

Prior to the passage of the MNAA, Massachusetts courts generally enforced geographical limitations of:

- The former employee's territory during employment.
- The employer's operating area.
- The company's current clients within a geographic area.

Agreements restricting an employee from doing business in areas where the employee's former employer operates are generally considered reasonable (*Lombard Med. Tec., Inc. v. Johannessen*, 729 F. Supp. 2d 432, 439 (D. Mass. 2010)(applying Massachusetts law); ; *Kroeger*, 432 N.E.2d at 570).

Massachusetts courts, however, have upheld nationwide and worldwide covenants because of the employer's broad market area (*EMC Corp. v. Allen*, 1997 WL 1366836, at *1 (Mass. Super. Ct. 1997); *Marcam*, 885 F. Supp. at 299 (applying Massachusetts law)).

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 addition to reasonable geographic restrictions, the Massachusetts Noncompetition Agreement Act requires non-compete agreements made on or after October 1, 2018, to be reasonable in the scope of proscribed activities in relation to the applicable employer interests protected. A restriction on activities of the former employee is presumed reasonable if it both:

- Protects a legitimate business interest (see Question 3: Employer's Protectable Interest).
- Is limited only to the specific types of services provided by the employee at any time during the last two years of employment.

(M.G.L. c. 149, § 24L(b)(vi).)

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?

Massachusetts courts have found reasonable restrictions based on either:

- The employee's territory during employment.
- The scope of the employer's operation.

(*All Stainless, Inc. v. Colby*, 308 N.E.2d 481, 486 (Mass. 1974).)

Under the Massachusetts Noncompetition Agreement Act (applicable to agreements made on or after October 1, 2018), the following restrictions are presumed reasonable:

- Geographic restrictions that are limited to areas where the employee provided services or had a material presence or influence in the past two years of employment.
- Restrictions of activities that:
 - protect an employer's legitimate business interest (see Question 3: Employer's Protectable Interest); and
 - are limited only to the specific types of services provided by the employee at any time during the last two years of employment.

(M.G.L. c. 149, § 24L(b)(v), (vi).)

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.

There is no other important legal precedent in the area of non-compete enforcement in Massachusetts.

Remedies

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

Under Massachusetts law, if the employee breaches the non-compete, a court may award the employer:

- Injunctive relief (*Shiple Co.*, 728 F. Supp. at 827-28; *Packaging Indus. Grp., Inc. v. Cheney*, 405 N.E.2d 106, 112 (Mass. 1980)).
- Damages, including lost profits and out-of-pocket expenses (*Nat'l Merc. Corp. v. Leyden*, 348 N.E.2d 771, 774-75 (Mass. 1976); *My Bread Baking Co. v. Jesi*, 214 N.E.2d 53, 56 (Mass. 1966)).

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

In Massachusetts, to get a preliminary injunction, the employer must prove:

- The likelihood of success on the merits.
- Irreparable harm if the injunction is denied.
- Risk of irreparable harm to the employer.

(*Packaging Indus.*, 405 N.E.2d at 111-12.)

As a general rule, a breach of a non-compete agreement tied to trade secret concerns triggers a finding of irreparable harm (*Aspect*, 787 F. Supp. 2d at 130).

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

The Massachusetts Noncompetition Agreement Act (MNAA), which applies to agreements entered on or after October 1, 2018, explicitly excludes non-solicitation agreements from the requirements under the MNAA (M.G.L. c. 149, § 24L(a)). Non-solicitation agreements generally are analyzed in Massachusetts courts as to whether they are reasonable and necessary to protect the employer's legitimate business interests, just as covenants not to compete are analyzed, because of their similar purpose and effect (see *Townsend Oil Co., Inc. v. Tuccinardi*, 2020 WL 958520, at *3 (Mass. Super. Ct. Jan. 16, 2020); *Barney, Inc. v. Barcomb*, 2003 WL 25932298, at *2 (Mass. App. Ct. Jan. 3, 2003)).

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Non-Disclosure Agreements

Non-disclosure agreements are different from non-competes because non-disclosure statements prevent only the disclosure of trade secrets and confidential information.

Similar to non-competes, a non-disclosure agreement must be:

- Necessary to protect a legitimate business interest.
- Reasonably limited in time and space, with terms no more restrictive than needed.
- Consistent with the public interest.
- Supported by consideration if made before hire.

(See *A.R.S. Servs., Inc. v. Baker*, 2012 WL 1088627, at *3 (Mass. Super. Feb. 21, 2012); *Inner-Tite Corp.*, 2010 WL 3038330, at *16.)

Non-disclosure and confidentiality agreements are also explicitly excluded from coverage under the MNAA (M.G.L. c. 149, § 24L(a)).

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

Massachusetts courts have not recognized the inevitable disclosure rule. A federal court in Massachusetts declined to apply a broad interpretation of inevitable disclosure in a preliminary injunction ruling, finding that the doctrine:

- May be used to establish irreparable harm **after** a party seeking an injunction already proved a likelihood of success on the merits.
- Is **not** a basis for future misappropriation of trade secrets.

(*U.S. Elec. Servs., Inc. v. Schmidt*, 2012 WL 2317358, at *8-9 (D. Mass. June 19, 2012).)

In *Boston Scientific Corp. v. Lee*, the US District Court for the District of Massachusetts refused to extend the inevitable disclosure doctrine where the court approved the preliminary injunction based on a non-disclosure agreement. However, the court allowed the former employee to work at the competing company where there was no non-compete agreement between them. (2014 WL 1946687, at *7-8, (D. Mass. May 14, 2014).)

