

NAMWOLF

LABOR & EMPLOYMENT

PRACTICE AREA COMMITTEE

# 2023 50-State Survey: Restrictive Covenants

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Immigration

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ACTION

ERISA AND  
BENEFIT PLAN  
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# Alabama

RESPONDENT Jennifer Scott, Esq. | [Miletich PC](#)

ARE NON-COMPETES ALLOWABLE OR OTHERWISE FAVORED? Yes, in certain circumstances.

ARE EMPLOYEE AND/OR CUSTOMER NON-SOLICITATION AGREEMENTS ALLOWABLE? Yes, in certain circumstances.

WHAT STATE STATUTES GOVERN NON-COMPETES? IN NO STATUTE EXISTS, WHAT IS THE LEADING CASE? Ala. Code § 8-1-190 et seq.

HAS THE STATE ADOPTED THE UTSA? Yes

WHAT IS THE STATUTE OF LIMITATIONS? Six years.

ANY EXCEPTIONS TO WHICH RESTRICTIVE COVENANTS ARE NOT ALLOWED? Restrictive covenants are void, except in certain circumstances as set forth by statute.

IS CONTINUED EMPLOYMENT SUFFICIENT CONSIDERATION? Yes

CAN BE ENFORCED AGAINST EMPLOYEES FIRED WITH OR WITHOUT CAUSE? Yes

IS THE INEVITABLE DISCLOSURE DOCTRINE AVAILABLE? Not decided.

IS BLUE PENCILING OR REFORMATION ALLOWED? Yes, reformation.

WILL VIOLATIONS EXTEND THE RESTRICTED COVENANTS? Yes

DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON REASONABLENESS OF TEMPORAL OR GEOGRAPHIC RESTRICTIONS? Temporal restrictions - yes, see Ala. Code § 8-1-190; Geographic restrictions - no.

DOES ANY STATUTE DEFINE PRESUMPTIVE PROTECTABLE LEGITIMATE BUSINESS INTERESTS? Yes, in certain circumstances.

ATTORNEYS' FEES TO THE  
PREVAILING PARTY?

Yes, in certain circumstances.

## Alaska

RESPONDENT

Jennifer Scott, Esq. | [Miletich PC](#)

ARE NON-COMPETES  
ALLOWABLE OR OTHERWISE  
FAVORED?

Yes

ARE EMPLOYEE AND/OR  
CUSTOMER NON-SOLICITATION  
AGREEMENTS ALLOWABLE?

Not decided yet, but likely.

WHAT STATE STATUTES GOVERN  
NON-COMPETES? IN NO  
STATUTE EXISTS, WHAT IS THE  
LEADING CASE?

None

HAS THE STATE ADOPTED THE  
UTSA?

Yes

WHAT IS THE STATUTE OF  
LIMITATIONS?

Three years.

ANY EXCEPTIONS TO WHICH  
RESTRICTIVE COVENANTS ARE  
NOT ALLOWED?

Restrictive covenants are scrutinized for reasonableness.

IS CONTINUED EMPLOYMENT  
SUFFICIENT CONSIDERATION?

Not decided.

CAN BE ENFORCED AGAINST  
EMPLOYEES FIRED WITH OR  
WITHOUT CAUSE?

Not decided.

IS THE INEVITABLE DISCLOSURE  
DOCTRINE AVAILABLE?

Not decided.

IS BLUE PENCILING OR  
REFORMATION ALLOWED?

Yes, reformation.

WILL VIOLATIONS EXTEND THE  
RESTRICTED COVENANTS?

Undecided.

DOES ANY STATUTE DEFINE  
PRESUMPTIVE LIMITATIONS ON  
REASONABLENESS OF  
TEMPORAL OR GEOGRAPHIC  
RESTRICTIONS?

No.

DOES ANY STATUTE DEFINE  
PRESUMPTIVE PROTECTABLE

No.

LEGITIMATE BUSINESS  
INTERESTS?

ATTORNEYS' FEES TO THE  
PREVAILING PARTY?

Unknown.

## Arizona

RESPONDENT

Stacey Campbell, Esq. | [Campbell Litigation, P.C.](#)

ARE NON-COMPETES  
ALLOWABLE OR OTHERWISE  
FAVORED?

Yes, allowed but not favored. *Ariz. Rev. Stat. § 44-1402; Amex Distrib. Co., Inc. v. Mascari*, 724 P.2d 596, 600 (Ariz. Ct. App. 1986).

ARE EMPLOYEE AND/OR  
CUSTOMER NON-SOLICITATION  
AGREEMENTS ALLOWABLE?

Yes, Arizona courts recognize the enforceability of non-solicitation agreements. *Hilb, Rogal & Hamilton Co. of Arizona v. McKinney*, 946 P.2d 464, 467 (Ariz. Ct. App. 1997).

WHAT STATE STATUTES GOVERN  
NON-COMPETES? IN NO  
STATUTE EXISTS, WHAT IS THE  
LEADING CASE?

*Ariz. Rev. Stat. § 44-1402; Amex Distrib. Co., Inc. v. Mascari*, 724 P.2d 596, 600 (Ariz. Ct. App. 1986).

HAS THE STATE ADOPTED THE  
UTSA?

Yes. *Ariz. Rev. Stat. §§44-401 to 44-407.*

WHAT IS THE STATUTE OF  
LIMITATIONS?

Arizona's 4-year catchall statute of limitations, codified at *Ariz. Rev. Stat. § 12-550*.

ANY EXCEPTIONS TO WHICH  
RESTRICTIVE COVENANTS ARE  
NOT ALLOWED?

Yes. Broadcasters: *Ariz. Rev. Stat. § 23-494*; Attorneys: *AZ ST S CT RULE 42 Rules of Professional Conduct ER 5.6*; and Physicians (permissible but "strictly construed"): *Valley Med. Specialists v. Faber*, 982 P.2d 1277, 1283 (Ariz. 1999).

IS CONTINUED EMPLOYMENT  
SUFFICIENT CONSIDERATION?

Yes. *Compass Bank v. Hartley*, 430 F. Supp. 2d 973, 978–79 (D. Ariz. 2006).

CAN BE ENFORCED AGAINST  
EMPLOYEES FIRED WITH OR  
WITHOUT CAUSE?

Yes. *American Credit Bureau v. Carter*, 462 P.2d 838, 840-41 (Ariz. Ct. App. 1969).

IS THE INEVITABLE DISCLOSURE  
DOCTRINE AVAILABLE?

No. *Bed Mart, Inc. v. Kelley*, 45 P.3d 1219 (Ariz. Ct. App. 2002) (only suggested that the doctrine of inevitable disclosure could apply if an employer had a legitimate interest in preventing disclosure that "would be inevitable if its former employees worked for one of its competitors").

IS BLUE PENCILING OR  
REFORMATION ALLOWED?

Yes, to a degree. *Compass Bank v. Hartley*, 430 F. Supp. 2d 973, 980 (D. Ariz. 2006) (severing unreasonable provisions and leaving in reasonable provisions permissible, but courts may not add to or rewrite invalid restrictive covenants).

WILL VIOLATIONS EXTEND THE  
RESTRICTED COVENANTS?

Yes. *Sec. Pest & Termite Sys. of S. Arizona Inc. v. Reyelts*, 2017 WL 6047735, at \*2 (Ariz. Ct. App. Dec. 7, 2017) (Allowing tolling of the non-competition period when non-competition agreement is a bargained for agreement and supported by consideration).

DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON REASONABLENESS OF TEMPORAL OF GEOGRAPHIC RESTRICTIONS?

No Statute.

DOES ANY STATUTE DEFINE PRESUMPTIVE PROTECTABLE LEGITIMATE BUSINESS INTERESTS?

No Statute.

ATTORNEYS' FEES TO THE PREVAILING PARTY?

Yes, limited. Ariz. Rev. Stat. § 12-341.01 (Court has discretion to award attorney's fees to the prevailing party in an action seeking to enforce a contract, express or implied).

## Arkansas

RESPONDENT

Brian Lerner, Esq. | [Kim Vaughan Lerner](#)

ARE NON-COMPETES ALLOWABLE OR OTHERWISE FAVORED?

Yes

ARE EMPLOYEE AND/OR CUSTOMER NON-SOLICITATION AGREEMENTS ALLOWABLE?

Yes

WHAT STATE STATUTES GOVERN NON-COMPETES? IN NO STATUTE EXISTS, WHAT IS THE LEADING CASE?

Ark. Stat. Ann. § 4-75-601

HAS THE STATE ADOPTED THE UTSA?

Ark. Code Ann. § 4-75-101

WHAT IS THE STATUTE OF LIMITATIONS?

3 years (UTSA);  
5 years (breach of contract)

ANY EXCEPTIONS TO WHICH RESTRICTIVE COVENANTS ARE NOT ALLOWED?

Ark. Code Title 17, Subtitle 3 (various medical professions)

IS CONTINUED EMPLOYMENT SUFFICIENT CONSIDERATION?

Yes

CAN BE ENFORCED AGAINST EMPLOYEES FIRED WITH OR WITHOUT CAUSE?

Not addressed since enactment of the statute; prior cases suggest restrictive covenants are not enforceable if an employer terminates an employee without cause

IS THE INEVITABLE DISCLOSURE DOCTRINE AVAILABLE?

Yes

IS BLUE PENCILING OR REFORMATION ALLOWED?

Before 7/22/2015 (blue pencil);  
After 7/22/2015 (reformation)

WILL VIOLATIONS EXTEND THE RESTRICTED COVENANTS?

Not yet decided

DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON REASONABLENESS OF TEMPORAL OF GEOGRAPHIC RESTRICTIONS?

Post-termination restriction up to two years presumptively reasonable; the lack of a specific or defined geographic descriptive restriction in a covenant not to compete agreement does not make the covenant not to compete agreement overly broad if the covenant not to compete agreement is limited with respect to time and scope in a manner that is not greater than necessary to defend the protectable business interest of the employer

DOES ANY STATUTE DEFINE PRESUMPTIVE PROTECTABLE LEGITIMATE BUSINESS INTERESTS?

Trade secrets; intellectual property; customer lists; goodwill with customers; knowledge of business practices; methods; profit margins; costs; other confidential information (that is confidential, proprietary, and increases in value from not being known by a competitor); training and education; other valuable employer data (if provided to employee and an employer would reasonably seek to protect or safeguard from a competitor in the interest of fairness)

ATTORNEYS' FEES TO THE PREVAILING PARTY?

Ark. Code Ann. § 16-22-308

## California

RESPONDENT

Lisa Lawson, Esq. | [Lawson & Lawson LLP](#)

ARE NON-COMPETES ALLOWABLE OR OTHERWISE FAVORED?

No, except under certain limited circumstances involving the sale of a business.

ARE EMPLOYEE AND/OR CUSTOMER NON-SOLICITATION AGREEMENTS ALLOWABLE?

Customer non-solicitation agreements are not allowable. *Edwards v. Arthur Andersen LLP*, 44 Cal.4th 937, 189 P. 3d 285 (2008). The California Supreme Court has not spoken, post-Andersen, as to whether employee non-solicitation agreements continue to be enforceable, but, in *AMN Healthcare, Inc. v. Aya Healthcare Services, Inc.*, a California appellate court invalidated a post-employee non-solicitation provision on the grounds that it restrained trade in violation of Section 16600. 28 Cal. App. 5th 923 (2018); see also *Barker v. Insight Global, LLC*, 2019 WL 176260 (N.D. Cal. Jan. 11, 2019) (citing AMN Healthcare in holding provision restricting regional director from soliciting employees or contractors during his employment and one year thereafter was unenforceable).

WHAT STATE STATUTES GOVERN NON-COMPETES? IN NO STATUTE EXISTS, WHAT IS THE LEADING CASE?

Cal. Bus. & Prof. Code §§ 16600, et seq.

HAS THE STATE ADOPTED THE UTSA?

Yes. Cal. Civ. Code § 3426.

WHAT IS THE STATUTE OF LIMITATIONS?

3 years (Cal. Civ. Code § 3426.6)



ANY EXCEPTIONS TO WHICH RESTRICTIVE COVENANTS ARE NOT ALLOWED?	Generally not allowed except in certain circumstances involving sale of the goodwill of a business.
IS CONTINUED EMPLOYMENT SUFFICIENT CONSIDERATION?	NA
CAN BE ENFORCED AGAINST EMPLOYEES FIRED WITH OR WITHOUT CAUSE?	NA
IS THE INEVITABLE DISCLOSURE DOCTRINE AVAILABLE?	No. See, e.g., <i>Schlage Lock Co. v. Whyte</i> , 101 Cal.App.4th 1443 (2002); <i>Globespan Inc. v. O'Neill</i> , 151 F.Supp.2d 1229 (C.D. Cal. 2001); <i>Bayer Corp. v. Roche Molecular Sys. Inc.</i> , 72 F.Supp.2d 1111 (N.D. Cal. 1999).
IS BLUE PENCILING OR REFORMATION ALLOWED?	"Blue-penciling" has been held by several courts to be impermissible. See, e.g., <i>D'Sa v. Playhut, Inc.</i> , 85 Cal.App.4th, 927, 934-35 (2000) (refusing to narrowly construe invalid covenant not to compete in order to make it enforceable); <i>Kolani v. Gluska</i> , 64 Cal.App.4th 402, 407-08 (1998) (holding that trial court properly declined to rewrite illegal covenant not to compete into narrow bar on theft of confidential information).
WILL VIOLATIONS EXTEND THE RESTRICTED COVENANTS?	NA
DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON REASONABLENESS OF TEMPORAL OR GEOGRAPHIC RESTRICTIONS?	NA
DOES ANY STATUTE DEFINE PRESUMPTIVE PROTECTABLE LEGITIMATE BUSINESS INTERESTS?	NA
ATTORNEYS' FEES TO THE PREVAILING PARTY?	

## Colorado

RESPONDENT	Stacey Campbell, Esq.   <a href="#">Campbell Litigation, P.C.</a>
ARE NON-COMPETES ALLOWABLE OR OTHERWISE FAVORED?	Yes, allowed but not favored. Colo. Rev. Stat. § 8-2-113. NOTE: Law governing noncompetes entered into on and after August 10, 2022 is changing per HB 22-1317 and becoming significantly more restrictive.
ARE EMPLOYEE AND/OR CUSTOMER NON-SOLICITATION AGREEMENTS ALLOWABLE?	Yes. <i>Phoenix Capital, Inc. v. Dowell</i> , 176 P.3d 835, 844 (Colo. Ct. App. 2007). On/after Aug. 11, 2022: Customer non-solicit agmts only valid for employees earning 60%+ of threshold amt. for highly compensated workers at time of execution AND enforcement and covenant is not broader than reasonably necessary to protect interests in trade secrets. HB 22-1317.

WHAT STATE STATUTES GOVERN NON-COMPETES? IN NO STATUTE EXISTS, WHAT IS THE LEADING CASE?	Colo. Rev. Stat. § 8-2-113; HB 22-1317 (amending Colo. Rev. Stat. § 8-2-113)
HAS THE STATE ADOPTED THE UTSA?	Yes, Col. Rev. Stat. §§ 7-74-101 et seq.
WHAT IS THE STATUTE OF LIMITATIONS?	3 years (CUTSA) Colo. Rev. Stat. § 7-74-107; 3 years (oral or written contracts) Colo. Rev. Stat. §13-80-101(1)(a).
ANY EXCEPTIONS TO WHICH RESTRICTIVE COVENANTS ARE NOT ALLOWED?	Yes. Attorneys: CO ST RPC Rule 5.6; Physicians: Colo. Rev. Stat. § 8-2-113(3) (Colo. Rev. Stat. § 8-2-113(5) on and after Aug. 10, 2022).
IS CONTINUED EMPLOYMENT SUFFICIENT CONSIDERATION?	Yes. <i>Lucht's Concrete Pumping, Inc. v. Horner</i> , 255 P.3d 1058, 1062 (Colo. 2011). May not be good law on and after Aug. 10, 2022 per HB 22-1377.
CAN BE ENFORCED AGAINST EMPLOYEES FIRED WITH OR WITHOUT CAUSE?	Yes, unless agreement provides otherwise. Non-Compete Laws: Colorado, Practical Law State Q&A 4-504-5402.
IS THE INEVITABLE DISCLOSURE DOCTRINE AVAILABLE?	No. <i>Rivendell Forest Prods., Ltd. v. Georgia-Pacific Corp.</i> , 824 F. Supp. 961 (D. Colo. 1993), rev'd on other grounds 28 F.3d 1042 (10th Cir. 1994) (an employee may use general knowledge the employee learned while employed by an ex-employer). CUTSA does prohibit "threatened" misappropriations of trade secrets, however. Colo. Rev. Stat. § 7-74-103.
IS BLUE PENCILING OR REFORMATION ALLOWED?	Yes. <i>Energex Enters., Inc. v. Anthony Doors, Inc.</i> , 250 F. Supp. 2d 1278, 1283 (D. Colo. 2003) (Colorado courts may blue pencil any unreasonable terms and enforce the modified agreement, but the decision to modify is discretionary). May not be good law on and after Aug. 10, 2022 per HB 22-1377.
WILL VIOLATIONS EXTEND THE RESTRICTED COVENANTS?	No. See, e.g. <i>KeyBank Nat'l Ass'n v. Williams</i> , 2020 WL 6257180, at *6 (D. Colo. Sept. 11, 2020), rev'd on other grounds 2020 WL 6255293 (D. Colo. Sept. 28, 2020).
DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON REASONABLENESS OF TEMPORAL OR GEOGRAPHIC RESTRICTIONS?	No Statute.
DOES ANY STATUTE DEFINE PRESUMPTIVE PROTECTABLE LEGITIMATE BUSINESS INTERESTS?	No Statute. However, on and after Aug. 10, 2022, any noncompete or customer nonsolicit agreements must be narrowly tailored as reasonably necessary to protect trade secrets. HB 22-1317.
ATTORNEYS' FEES TO THE PREVAILING PARTY?	Yes. 23 <i>LTD v. Herman</i> , 457 P.3d 754, 762 (Colo. App. 2019) (The party in whose favor the decision or verdict on liability is rendered is the prevailing party for purposes of awarding attorney fees). For restrictive covenants on/after Aug. 10, 2022, employers who attempt to enforce void restrictive covenants may be

assessed the aggrieved employee's attorneys' fees as a penalty. This fee-shifting provision is one-sided. HB 22-1377.

## Connecticut

### RESPONDENT

Kerrie Heslin, Esq. | [Nukk-Freeman & Cerra, PC](#)

### ARE NON-COMPETES ALLOWABLE OR OTHERWISE FAVORED?

Yes, non-competes are permitted, so long as they are reasonable as to: 1) length, 2) geographic scope, 3) the protection to the employer, 4) the impact on the employee's ability to earn a living, and the 5) public interest. *Weiss and Assocs., Inc. v. Wiederlight*, 208 Conn. 525, 529-30 (1988). There are some limitations with respect to specific professions. Connecticut statute prohibits owners or operators of broadcast television or radio stations from imposing non-compete provisions upon broadcast employees (other than sales or management employees). Conn. Gen. Stat. 31-50b. Statute also prohibits non-compete agreements that prohibit security guards from engaging in the same or similar job at the same location as the employer, unless that person has obtained trade secrets. Conn. Gen. Stat. 31-50a.

### ARE EMPLOYEE AND/OR CUSTOMER NON-SOLICITATION AGREEMENTS ALLOWABLE?

Employee and customer non-solicitation agreements are permitted and analyzed using the same framework as used for non-competes. "The five factors to be considered in determining whether such a covenant is reasonable and, therefore, enforceable are: (1) the length of time the restriction is operative; (2) the extent of the geographical area covered; (3) the fairness of the protection afforded the employer; (4) the extent of the restraint on the employee; (5) the extent of the interference with the public interest." *Spitz, Sullivan, Watchel & Falcetta v. Murphy*, 1991 WL 112718 (Conn. Super. June 13, 1991). Non-solicitation agreements need not necessarily be limited geographically, if the customer base is limited to a reasonable geographic area. *New Haven Tobacco Co., v. Perrelli*, 18 Conn. App. 531, 535 (1989).

### WHAT STATE STATUTES GOVERN NON-COMPETES? IN NO STATUTE EXISTS, WHAT IS THE LEADING CASE?

Non-competes are governed by the tests set forth in *Scott v. General Iron & Welding Co.*, 171 Conn. 132, 137 (1976) and *Weiss and Assocs., Inc. v. Wiederlight*, 208 Conn. 525, 529-30 (1988). Non-competes must be reasonable as to 1) length, 2) geographic scope, 3) the protection to the employer, 4) the impact on the employee's ability to earn a living, and the 5) public interest. Conn. Gen. Stat. 31-50b limits non-competes as to broadcast employers and their employees. Conn. Gen. Stat. 31-50a limits non-competes as to security guards. Conn. Gen. Stat. 20-14p governs non-compete agreements as to physicians.

### HAS THE STATE ADOPTED THE UTSA?

Yes, Connecticut has adopted the Uniform Trade Secrets Act. See Conn. Gen. Stat. 35-50, et seq.

### WHAT IS THE STATUTE OF LIMITATIONS?

Actions for misappropriation pursuant to the UTSA have a three (3) year statute of limitations. Conn. Gen. Stat. 35-56. A breach of contract action for violation of a restrictive covenant has a six (6) year statute of limitations. Conn. Gen. Stat. 52-576(a).

ANY EXCEPTIONS TO WHICH RESTRICTIVE COVENANTS ARE NOT ALLOWED?	Conn. Gen. Stat. 31-50b limits non-competes as to broadcast employers and their employees. Conn. Gen. Stat. 31-50a limits non-competes as to security guards. Conn. Gen. Stat. 20-14p governs non-compete agreements as to physicians and imposes additional parameters as to what may be considered a valid non-competition agreement.
IS CONTINUED EMPLOYMENT SUFFICIENT CONSIDERATION?	No. Continued employment is not sufficient consideration on its own. <i>Van Dyck Printing Co. v. DiNicola</i> , 43 Conn. Supp. 191 (Conn. Super. 1993), aff'd 231 Conn. 272 (Conn. App. 1994).
CAN BE ENFORCED AGAINST EMPLOYEES FIRED WITH OR WITHOUT CAUSE?	Restrictive covenants are enforceable even when an employee is terminated by the employer. <i>Weiss and Assocs. V. Wiederlight</i> , 208 Conn. 525, 532 (1992).
IS THE INEVITABLE DISCLOSURE DOCTRINE AVAILABLE?	Yes. Employers may assert that the similarity between its employee's current and former employment makes it inevitable that the employee will disclose his or her former employer's trade secrets and other confidential and proprietary information. Courts will generally only apply the inevitable disclosure doctrine when the employee is bound by a covenant not to compete. <i>Aetna, Inc. v. Fluegel</i> , 2008 WL 544504, *8 (Conn. Super. February 7, 2008)
IS BLUE PENCILING OR REFORMATION ALLOWED?	Yes, blue penciling is permitted if the agreement expresses intent to make the terms severable. <i>Deming v. Nationwide Mutual Ins. Co.</i> , 279 Conn. 745, 769, n. 21 (2006)
WILL VIOLATIONS EXTEND THE RESTRICTED COVENANTS?	The Court may extend the duration of the restrictive covenant due to a violation, if provided for by the agreement. <i>VisonPoint, LLC v. Gish</i> , 2016 WL 8135540, *6 (Conn. Super. December 27, 2016) (citing <i>Aladdin Vapital Holdings, LLC v. Donoyan</i> , Docket No. 3:11cv655 (MRK)(D. Conn., June 8, 2011)).
DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON REASONABLENESS OF TEMPORAL OF GEOGRAPHIC RESTRICTIONS?	Physicians may not be limited for a period greater than one (1) year, and beyond a fifteen (15) mile radius from the primary site where the physician practices. Conn. Gen. Stat. 20-14p. There are no other presumptive limitations defined by statute.
DOES ANY STATUTE DEFINE PRESUMPTIVE PROTECTABLE LEGITIMATE BUSINESS INTERESTS?	None expressly defined by statute.
ATTORNEYS' FEES TO THE PREVAILING PARTY?	Yes, if the agreement provides for an award of attorneys fees to the prevailing party, the Court will award attorneys fees to the prevailing party, so long as the claim is reasonable in amount. See, e.g., <i>Beacon Insurance &amp; Investment Group, LLC v. Panzo</i> , 2016 WL 4507389, *13-14 (Conn. Super. July 25, 2016).

## Delaware

RESPONDENT	Jamie Augustinsky, Esq.   (formerly with NAMWOLF firm) <a href="#">The Axelrod Firm</a>
ARE NON-COMPETES ALLOWABLE OR OTHERWISE FAVORED?	Allowed if reasonable and necessary to protect certain business interests of employers, if those interests outweighed the harm enforcement would do to the employee.

ARE EMPLOYEE AND/OR CUSTOMER NON-SOLICITATION AGREEMENTS ALLOWABLE?	Yes, non-solicitation agreements are enforceable if they (i) meet general contract law requirements, (ii) are reasonable in scope and duration, (iii) advance a legitimate economic interest of the employer, and (iv) balance the interest of the employee and the public. <i>Hough Assocs. v. Hill</i> , 2007 Del. Ch. LEXIS 5, at *47-48 (Del. Ch. Jan. 17, 2007); <i>TriState Courier &amp; Carriage, Inc. v. Berryman</i> , 2004 Del. Ch. LEXIS 43, at *40 (Del. Ch. Apr. 15, 2004).
WHAT STATE STATUTES GOVERN NON-COMPETES? IN NO STATUTE EXISTS, WHAT IS THE LEADING CASE?	6 DE Code 2707 places restrictions on non-competes relating to physicians
HAS THE STATE ADOPTED THE UTSA?	Yes. Del Code Ann Title 6 2001a
WHAT IS THE STATUTE OF LIMITATIONS?	3 years.
ANY EXCEPTIONS TO WHICH RESTRICTIVE COVENANTS ARE NOT ALLOWED?	Not permissible with respect to physicians when the non-compete restricts the physician's right to practice medicine in a certain location and/or for a defined period of time. See 6 DE Code 2707. Additionally, Delaware Rules of Professional Conduct prohibit attorneys from entering into an employment or operating agreement that restricts an attorney's right to practice after the termination of an agreement. See Delaware Rule of Professional Conduct 5.6 (a).
IS CONTINUED EMPLOYMENT SUFFICIENT CONSIDERATION?	Yes, for those signed before or at inception of employment. Continued employment may be sufficient consideration for those signed after employment begins, but courts will evaluate the circumstances of each case to determine sufficiency of such consideration.
CAN BE ENFORCED AGAINST EMPLOYEES FIRED WITH OR WITHOUT CAUSE?	Yes.
IS THE INEVITABLE DISCLOSURE DOCTRINE AVAILABLE?	Yes.
IS BLUE PENCILING OR REFORMATION ALLOWED?	Has been permitted; however, in <i>FP UC Holdings, LLC, et al. v. James W. Hamilton, Jr., et al.</i> , No. 2019-1029-JRS, 2020 Del. Ch. LEXIS 110 (March 27, 2020), the Chancery Court declined the request to blue-pencil, noting that it was an "implicit concession" that the relevant non-compete was facially overbroad, which evidences that blue-penciling will be entirely within a court's discretion.
WILL VIOLATIONS EXTEND THE RESTRICTED COVENANTS?	Yes.
DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON REASONABLENESS OF TEMPORAL OR GEOGRAPHIC RESTRICTIONS?	No.

DOES ANY STATUTE DEFINE PRESUMPTIVE PROTECTABLE LEGITIMATE BUSINESS INTERESTS?

No.

ATTORNEYS' FEES TO THE PREVAILING PARTY?

No.

## District of Columbia

RESPONDENT

Kate Lawrence, Esq. | [Lawrence Law](#)

ARE NON-COMPETES ALLOWABLE OR OTHERWISE FAVORED?

On January 11, 2021, D.C. passed the Ban on Non-Compete Agreements Amendment Act of 2020 (the “Act”). D.C. CODE ANN. § 32-581.02 (West 2022). Under the Act, “[n]o employer operating in the District of Columbia may request or require any employee working in the District of Columbia to agree to a non-compete policy or agreement.” Id. The Act does not apply to provisions restricting individuals from disclosing their employer’s confidential, proprietary, or sensitive information, client list, customer list, or trade secrets. Id.

o The Act’s implementation date is October 1, 2022. Non-competes entered into prior to that date are unaffected.

☐ The responses below reflect D.C. law pre-October 1, 2022—i.e., before the Act is implemented.

o Non-competes in D.C. are generally permitted if: (1) the restraint on trade is reasonable, (2) the restraint is only what is necessary to protect the employer’s business interest, and (3) the agreement does not go against public policy. See *Deutsch v. Barsky*, 795 A.2d 669, 674 (D.C. 2002). In balancing the interests of the employer and the employee, D.C. courts also consider: (1) the employer’s legitimate business interest, and (2) the nature of the hardship imposed on the employee. Id. at 679. In determining the reasonableness of the non-compete restriction, D.C. courts also consider: (1) the type of business, (2) services provided by the employee, and (3) the position of the employee. *Chem. Fireproofing Corp. v. Krouse*, 155 F.2d 422, 423 (D.C. Cir. 1946).

ARE EMPLOYEE AND/OR CUSTOMER NON-SOLICITATION AGREEMENTS ALLOWABLE?

Employee and customer non-solicitation agreements are allowable in D.C. See *Steiner v. Am. Friends of Lubawitch (Chabad)*, 177 A.3d 1246, 1262 (D.C. 2018)

WHAT STATE STATUTES GOVERN NON-COMPETES? IN NO STATUTE EXISTS, WHAT IS THE LEADING CASE?

No statute governs non-compete clauses pre-October 1, 2022. D.C. Code § 28-4502 prohibits contracts that unreasonably restrain trade. Post-October 1, 2022, the Act will govern non-compete clauses.

HAS THE STATE ADOPTED THE UTSA?

D.C. has codified the D.C. Uniform Trade Secrets Act, which is a slight modification of the UTSA. See D.C. CODE ANN. §§ 36-401–10 (West 2011).

WHAT IS THE STATUTE OF LIMITATIONS?

The statute of limitations in D.C. for breach of contracts actions is three years. See D.C. CODE ANN. § 12-301 (West 2019).

ANY EXCEPTIONS TO WHICH RESTRICTIVE COVENANTS ARE NOT ALLOWED?

Restrictive covenants are not allowed if they do not meet certain requirements. See Answer No. 1.

IS CONTINUED EMPLOYMENT SUFFICIENT CONSIDERATION?

An offer of employment is sufficient consideration to support non-compete agreements in D.C. See, e.g., *Ellis v. James V. Hurson Assocs., Inc.*, 565 A.2d 615 620 (D.C. 1989). If executed after employment begins, some further consideration (e.g., change in terms of employment) is required to support non-compete agreement. See *id.* Continued employment for a “substantial period of time” is sufficient consideration to support non-compete agreements in D.C. See *id.* n.15 (holding that while employer was not required to employ employee for a minimum period of time, its employing employee for ten years was a substantial period of time providing for sufficient consideration of non-compete agreement).

CAN BE ENFORCED AGAINST EMPLOYEES FIRED WITH OR WITHOUT CAUSE?

D.C. non-compete clauses can be enforced against employees fired for cause. See, e.g., *Steiner*, 177 A.3d at 1263. D.C. courts may choose not to enforce non-competes if the employee was fired without cause.

IS THE INEVITABLE DISCLOSURE DOCTRINE AVAILABLE?

D.C. has not adopted the doctrine of inevitable disclosure. However, the U.S. District Court for the District of Columbia has stated as follows: “[a]s this Court is unaware of any cases in which the D.C. courts have addressed this [inevitable disclosure] doctrine, the Court cannot say as a matter of legal certainty that the inevitable disclosure doctrine would not apply in this case.” *Info. Strategies, Inc. v. Dumosch*, 13 F. Supp. 3d 135, 143 (D.D.C. 2014) (internal quotations omitted).

IS BLUE PENCILING OR REFORMATION ALLOWED?

Blue penciling is not permitted in D.C. See *Steiner*, 177 A.3d at 1256–57. D.C. has adopted the “equitable reformation” doctrine. See *id.* This doctrine permits D.C. courts to enforce restrictive covenants “to the extent that its terms are reasonable, regardless of grammatical severability.” See *id.* at 1256.

WILL VIOLATIONS EXTEND THE RESTRICTED COVENANTS?

D.C. courts have not directly addressed whether equitable extensions of restrictive covenants are permitted. See *Padco Advisors, Inc. v. Omdahl*, 179 F.Supp.2d 600, 613 (D. Md. 2002) (“Maryland courts have not spoken directly to” whether equitable extensions are permissible.”); see also *Roanoke Eng’g Sales Co. v. Rosenbaum*, 290 S.E.2d 882, 886 (Va. 1982) (stating that if the non-compete period is not enforced via equitable extension, it could “reward the breach of contract, encourage protracted litigation, and provide an incentive to dilatory tactics”).

DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON REASONABLENESS OF TEMPORAL OR GEOGRAPHIC RESTRICTIONS?

D.C. does not have a statute that defines limitations on reasonableness of temporal or geographic restrictions. D.C. courts have held that temporal restrictions of three years are reasonable. See *Ellis*, 565 A.2d at 621 (upholding three-year non-compete agreement); *Erikson v. Hawley*, 12 F.2d 491, 492 (D.C. 1926) (upholding ten-year non-compete agreement because it was a standard time period for orthodontists); see also *Meyer v. Wineburgh*, 110 F. Supp. 957, 959 (D.D.C. 1953) (upholding five-year non-compete agreement). In terms of geographic restrictions, D.C. courts have upheld 30-mile restrictions. See *Meyer*, 110 F. Supp. At 959; see also *Chem Fireproofing*, 155 F.2d at 423



	(finding that a six-state restriction coupled with a three-year temporal restriction was too restrictive).
DOES ANY STATUTE DEFINE PRESUMPTIVE PROTECTABLE LEGITIMATE BUSINESS INTERESTS?	D.C. does not have any statute that defines presumption, protectable, legitimate business interests.
ATTORNEYS' FEES TO THE PREVAILING PARTY?	There is no prohibition on including attorneys' fees to prevailing party provisions in D.C. non-compete agreements See <i>Nest and Totah Venture, LLC v. Deutsch</i> , 31 A.3d 1211, 1230 (D.C. 2011) (“[W]here a contract provides that fees are to be awarded to the prevailing party, the fees will be collateral to the merits of the case and will not be an element of damages to be proved at trial.”) (citation and internal quotations omitted).

## Florida

RESPONDENT	Brian Lerner, Esq.   <a href="#">Kim Vaughan Lerner</a>
ARE NON-COMPETES ALLOWABLE OR OTHERWISE FAVORED?	Yes
ARE EMPLOYEE AND/OR CUSTOMER NON-SOLICITATION AGREEMENTS ALLOWABLE?	Yes
WHAT STATE STATUTES GOVERN NON-COMPETES? IN NO STATUTE EXISTS, WHAT IS THE LEADING CASE?	Fla. Stat. § 542.335
HAS THE STATE ADOPTED THE UTSA?	Fla. Stat. §§ 688.001 to 688.009
WHAT IS THE STATUTE OF LIMITATIONS?	3 years (UTSA); 5 years (breach of contract)
ANY EXCEPTIONS TO WHICH RESTRICTIVE COVENANTS ARE NOT ALLOWED?	Fla. Stat. § 542.336 (where county has one entity that employs all physicians within the specialty)
IS CONTINUED EMPLOYMENT SUFFICIENT CONSIDERATION?	Yes
CAN BE ENFORCED AGAINST EMPLOYEES FIRED WITH OR WITHOUT CAUSE?	Yes
IS THE INEVITABLE DISCLOSURE DOCTRINE AVAILABLE?	Unsettled given conflicting decisions, see <i>Fountain v. Hudson Cush-N-Foam Corp.</i> , 122 So. 2d 232, 234 (Fla. 3d DCA 1960), and <i>Del Monte Fresh Produce Co. v. Dole Food Co.</i> , 148 F. Supp. 2d 1326 (S.D. Fla. 2001)



IS BLUE PENCILING OR REFORMATION ALLOWED?	Yes
WILL VIOLATIONS EXTEND THE RESTRICTED COVENANTS?	Yes if by contract; possibly yes based on equity
DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON REASONABLENESS OF TEMPORAL OF GEOGRAPHIC RESTRICTIONS?	Post-termination restriction more than two years presumptively unreasonable; restriction against distributor, dealer, franchisee, or licensee more than five years presumptively unreasonable; restriction against seller of business more than seven years presumptively unreasonable; restriction predicated on protection of trade secret more than ten years presumptively unreasonable
DOES ANY STATUTE DEFINE PRESUMPTIVE PROTECTABLE LEGITIMATE BUSINESS INTERESTS?	Legitimate business interest includes and is not limited to trade secrets as defined in Fla. Stat. § 688.002(4); valuable confidential business or professional information that otherwise does not qualify as trade secrets; substantial relationships with specific prospective or existing customers, patients, or clients; customer, patient, or client goodwill associated with an ongoing business or professional practice, by way of trade name, trademark, service mark, or “trade dress”, a specific geographic location, or a specific marketing or trade area; and extraordinary or specialized training
ATTORNEYS' FEES TO THE PREVAILING PARTY?	Fla. Stat. § 542.335(1)(k); Fla. Stat. § 688.005 (UTSA)

## Georgia

RESPONDENT	Jamala S. McFadden, Esq.   <a href="#">The Employment Law Solution</a>
ARE NON-COMPETES ALLOWABLE OR OTHERWISE FAVORED?	Yes, non-compete clauses are allowable. Official Georgia Code Annotated, 13-8-50 et seq. The Restrictive Covenants Act (GRCA) became effective May 11, 2011.
ARE EMPLOYEE AND/OR CUSTOMER NON-SOLICITATION AGREEMENTS ALLOWABLE?	<p>Customer non-solicit. Yes, customer (and actively sought prospective customer) non-solicitation agreements are allowable with respect to those customers that the employee had material contact during his or her employment for purposes of providing products or services that are competitive with those provided by the employer's business.</p> <p><i>CMGRP, Inc. v. Gallant</i>, 343 Ga. App. 91, 806 S.E. 2d 16 (2017). O.C.G.A. 13-8-53(b)</p> <p>Employee non-solicit. While there is no GA statute on the issue, some court decisions suggest that employee non-solicit agreements are allowable.</p>
WHAT STATE STATUTES GOVERN NON-COMPETES? IN NO STATUTE EXISTS, WHAT IS THE LEADING CASE?	Official Georgia Code Annotated, Title 13, Chapter 8, Article 4
HAS THE STATE ADOPTED THE UTSA?	Yes, codified as O.C.G.A. section 10-1-760, et seq., the Georgia Trade Secrets Act.

WHAT IS THE STATUTE OF LIMITATIONS?

2 years or less. "In the case of a restrictive covenant sought to be enforced against a former employee and not associated with the sale or ownership of all or a material part of: [a]n equity interest or profit participation, of any other type, in a business, professional practice, or other commercial enterprise, a court shall presume to be reasonable in time any restraint two years or less in duration and shall presume to be unreasonable in time any restraint more than two years in duration, measured from the date of the termination of the business relationship." Ga. Code Ann., 13-8-57(b)(5) (Effective May 11, 2011).

ANY EXCEPTIONS TO WHICH RESTRICTIVE COVENANTS ARE NOT ALLOWED?

O.C.G.A. 13-8-53 (c)(2) Geographic limitations

- *Steuer v. Tomaras*, 2022 GABA LEXIS 5

"Generally, a non-competition provision without a geographic limitation are void and unenforceable.

"Because the non-compete covenant did not contain any reference to a geographic area limitation, it failed to comply with O.C.G.A. §13-8-53(a). *Carpetcare Multiservices, LLC v. Carle*, 347 Ga. App. 491, 500 819 S.E.2d 894 (2018).

IS CONTINUED EMPLOYMENT SUFFICIENT CONSIDERATION?

Yes.

CAN BE ENFORCED AGAINST EMPLOYEES FIRED WITH OR WITHOUT CAUSE?

Yes, unless there is a provision stating otherwise in the employment agreement.

IS THE INEVITABLE DISCLOSURE DOCTRINE AVAILABLE?

No. *Holton v. Physician Oncology Servs., LP*, 292 Ga. 864, 742 S.E.2d 702 (2013). "The inevitable disclosure doctrine is not an independent claim under which a trial court may enjoin an employee from working for an employer of disclosing trade secrets."

IS BLUE PENCILING OR REFORMATION ALLOWED?

Yes. Modification is at the court's discretion. O.C.G.A. 13-8-53(d) and O.C.G.A. 13-8-54(b).

*Belt Power, LLC v. Reed*, 354 Ga. App. 289, 840 S.E.2d 765, 2020 Ga. App. LEXIS 157 (2020).

WILL VIOLATIONS EXTEND THE RESTRICTED COVENANTS?

No. Courts cannot toll the duration of noncompete agreements, even against willful violators. *Daneshgari v. Patriot Towing Services*, 361 Ga. App. 541 (Ga. Ct. App. 2021)

Employers cannot have tolling provisions within their restrictive covenants... "it potentially extends all of the restrictive covenants without limit. *Holsinger v. Fortress Inv. Group LLC & Hybrid Gp Holdings LLC*, 2019 Ga. Super. Lexis 2663. *ALW Mktg. Corp. v. McKinney*, 205 Ga. App. 184, 188 (1992); see also *Crump Ins. Servs. v. All Risks, Ltd.*, 315 Ga. App. 490, 492 (2012); *Gynecologic Oncology, P.C. v. Weiser*, 212 Ga. App. 858, 859 (1994); *Boone v. Corestaff Support Servs., Inc.*, 805 F. Supp. 2d 1362, 1370 (N.D. Ga. 2011).

DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON REASONABLENESS OF TEMPORAL OR GEOGRAPHIC RESTRICTIONS?

Yes. O.C.G.A. 13-8-53 (c)(2)

DOES ANY STATUTE DEFINE PRESUMPTIVE PROTECTABLE LEGITIMATE BUSINESS INTERESTS?

Yes. O.C.G.A. 13-8-51 (9) defines legitimate business interest.

ATTORNEYS' FEES TO THE PREVAILING PARTY?

Attorneys' fees are available to the prevailing party for a restrictive covenant violation under OCGA 13-6-11 where the plaintiff has asserted a cause of action for attorneys' fees and where the defendant has acted in bad faith, has been stubbornly litigious, or has caused the plaintiff unnecessary trouble and expense.

## Hawaii

RESPONDENT

Brian Lerner, Esq. | [Kim Vaughan Lerner](#)

ARE NON-COMPETES ALLOWABLE OR OTHERWISE FAVORED?

Yes (but certain exceptions)

ARE EMPLOYEE AND/OR CUSTOMER NON-SOLICITATION AGREEMENTS ALLOWABLE?

Yes, except for employees in a technology business; unclear as to customers

WHAT STATE STATUTES GOVERN NON-COMPETES? IN NO STATUTE EXISTS, WHAT IS THE LEADING CASE?

Haw. Rev. Stat. § 480-4

HAS THE STATE ADOPTED THE UTSA?

Haw. Rev. Stat. §§ 482B-1 to 482B-9

WHAT IS THE STATUTE OF LIMITATIONS?

3 years (UTSA);  
6 years (breach of contract)

ANY EXCEPTIONS TO WHICH RESTRICTIVE COVENANTS ARE NOT ALLOWED?

Employees in a technology business

IS CONTINUED EMPLOYMENT SUFFICIENT CONSIDERATION?

Yes, likely

CAN BE ENFORCED AGAINST EMPLOYEES FIRED WITH OR WITHOUT CAUSE?

Not yet decided

IS THE INEVITABLE DISCLOSURE DOCTRINE AVAILABLE?

Not yet decided

IS BLUE PENCILING OR REFORMATION ALLOWED?

Reformation

WILL VIOLATIONS EXTEND THE RESTRICTED COVENANTS?

Unclear

DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON REASONABLENESS OF TEMPORAL OF GEOGRAPHIC RESTRICTIONS?	Reasonable time, space, scope
DOES ANY STATUTE DEFINE PRESUMPTIVE PROTECTABLE LEGITIMATE BUSINESS INTERESTS?	Trade secrets; confidential information
ATTORNEYS' FEES TO THE PREVAILING PARTY?	Haw. Rev. Stat. § 607-14.9 (for prevailing employee)

## Idaho

RESPONDENT	Mishell B. Kneeland, Esq.   <a href="#">Culhane Meadows PLLC</a>
ARE NON-COMPETES ALLOWABLE OR OTHERWISE FAVORED?	Allowed. Courts had been trending away from enforcement, but legislature passed Title 44, Chapter 27 of the Idaho Code, “Agreements and Covenants Protecting Legitimate Business Interests” (APLBI), which sets forth presumptions for enforceable non-compete agreements and reduces the burdens on employers who are forced to file lawsuits to enforce non-compete agreements.
ARE EMPLOYEE AND/OR CUSTOMER NON-SOLICITATION AGREEMENTS ALLOWABLE?	In certain circumstances as set forth in the APLBI.
WHAT STATE STATUTES GOVERN NON-COMPETES? IN NO STATUTE EXISTS, WHAT IS THE LEADING CASE?	Title 44, Chapter 27 of the Idaho Code entitled “Agreements and Covenants Protecting Legitimate Business Interests” (APLBI)
HAS THE STATE ADOPTED THE UTSA?	Yes. Idaho Code § 48-801, et seq. But did not adopt UTSA Section 8 did not enact section, which requires courts in the state to apply and construe their state statute to effectuate the general purpose of making trade secret law uniform.
WHAT IS THE STATUTE OF LIMITATIONS?	Five years.
ANY EXCEPTIONS TO WHICH RESTRICTIVE COVENANTS ARE NOT ALLOWED?	No.
IS CONTINUED EMPLOYMENT SUFFICIENT CONSIDERATION?	Yes, unless restriction is greater than 18 months, in which case additional consideration must be given.
CAN BE ENFORCED AGAINST EMPLOYEES FIRED WITH OR WITHOUT CAUSE?	Yes

IS THE INEVITABLE DISCLOSURE DOCTRINE AVAILABLE?	Not yet decided.
IS BLUE PENCILING OR REFORMATION ALLOWED?	Yes.
WILL VIOLATIONS EXTEND THE RESTRICTED COVENANTS?	Unclear.
DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON REASONABLENESS OF TEMPORAL OF GEOGRAPHIC RESTRICTIONS?	Yes. 18 months and geographical limitation is reasonable if it is restricted to the areas in which an employee provided services or had a significant presence or influence
DOES ANY STATUTE DEFINE PRESUMPTIVE PROTECTABLE LEGITIMATE BUSINESS INTERESTS?	Yes. "Legitimate business interests" shall include, but not be limited to, an employer's goodwill, technologies, intellectual property, business plans, business processes and methods of operation, customers, customer lists, customer contacts and referral sources, vendors and vendor contacts, financial and marketing information, and trade secrets as that term is defined by chapter 8, title 48, Idaho Code.
ATTORNEYS' FEES TO THE PREVAILING PARTY?	Where damages are less than \$35,000.

## Illinois

RESPONDENT	Michael A. Carlin, Esq.   <a href="#">Zuber Lawler</a>
ARE NON-COMPETES ALLOWABLE OR OTHERWISE FAVORED?	Non-competes are allowable under narrowly defined conditions in the employment context, but disfavored
ARE EMPLOYEE AND/OR CUSTOMER NON-SOLICITATION AGREEMENTS ALLOWABLE?	Yes, but only under strictly defined circumstances
WHAT STATE STATUTES GOVERN NON-COMPETES? IN NO STATUTE EXISTS, WHAT IS THE LEADING CASE?	Illinois Freedom to Work Act, 820 ILCS 90, et seq. The Illinois Rules of Professional Conduct govern non-compete agreements for lawyers (IL R S CT RPC Rule 5.6). Section 10 of the Illinois Broadcast Industry Free Market Act governs non-compete agreements for broadcasting industry employees (820 ILCS 17/10(a)). Government Contractors: 30 ILCS 500/50-25
HAS THE STATE ADOPTED THE UTSA?	Yes
WHAT IS THE STATUTE OF LIMITATIONS?	The statute of limitations for breach of contract is 10 years
ANY EXCEPTIONS TO WHICH RESTRICTIVE COVENANTS ARE NOT ALLOWED?	Yes, non-competes made after 1/1/22 are not permitted for low wage employees, employees who earn less than \$75,000 per year Additionally, a non-compete made after 1/1/22 is void and illegal for individuals employed in construction. This does not apply to construction employees who primarily perform management, engineering or architectural, design, or sales

	functions for the employer or who are shareholders, partners, or owners in any capacity of the employer.
IS CONTINUED EMPLOYMENT SUFFICIENT CONSIDERATION?	No, unless the employee has been employed for 2 years
CAN BE ENFORCED AGAINST EMPLOYEES FIRED WITH OR WITHOUT CAUSE?	Yes
IS THE INEVITABLE DISCLOSURE DOCTRINE AVAILABLE?	Yes
IS BLUE PENCILING OR REFORMATION ALLOWED?	Yes
WILL VIOLATIONS EXTEND THE RESTRICTED COVENANTS?	No
DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON REASONABLENESS OF TEMPORAL OR GEOGRAPHIC RESTRICTIONS?	No, there are no presumptively reasonable temporal or geographic restrictions defined
DOES ANY STATUTE DEFINE PRESUMPTIVE PROTECTABLE LEGITIMATE BUSINESS INTERESTS?	No
ATTORNEYS' FEES TO THE PREVAILING PARTY?	Yes, if the agreement provides for attorneys fees to the prevailing party

## Indiana

RESPONDENT	Deborah Brouwer, Esq.   <a href="#">Nemeth Bonnette Brouwer PC</a>
ARE NON-COMPETES ALLOWABLE OR OTHERWISE FAVORED?	Yes, Indiana allow for non-compete agreements as long as the restrictions (time, activity, geographic area) are deemed reasonable.
ARE EMPLOYEE AND/OR CUSTOMER NON-SOLICITATION AGREEMENTS ALLOWABLE?	Yes, Indiana allows the enforceability of customer non-solicitation agreements. Indiana courts hold that companies have a protectable interest in protecting current company clients, but are less likely to have a legitimate interest in preventing the former employee from soliciting prospective clients who the business may have contacted.
WHAT STATE STATUTES GOVERN NON-COMPETES? IN NO STATUTE EXISTS, WHAT IS THE LEADING CASE?	Indiana does not have a statute governing general non-compete agreements. Industry specific rules and codes exist to regulate non-compete agreements for certain professions. Indiana State Rules of Professional Conduct Rule 5.6 governs non-compete agreements for attorneys. Indiana Code § 25-22.5-5.5-2 governs non-compete agreements for physicians. The leading case in Indiana regarding non-compete agreements is <i>Licocci v. Cardinal Assocs., Inc.</i> , where the Indiana Supreme Court enforced a non-compete provision restricting two

salesmen from selling similar products to any of their prior customers for one year after their termination. *Licocci v. Cardinal Associates, Inc.*, 445 N.E.2d 556 (Ind. 1983).

HAS THE STATE ADOPTED THE UTSA?

Yes, Indiana adopted the UTSA at Ind. Code. Ann. § 24-2-3-1

WHAT IS THE STATUTE OF LIMITATIONS?

The statute of limitations for a breach of an employment agreement is 2 years. §34-11-2-1. The statute of limitations for a breach of a written contract is 10 years. Ind. Code. §34-11-2-11. The statute of limitations for a breach of an oral agreement is 6 years. §34-11-2-7.

ANY EXCEPTIONS TO WHICH RESTRICTIVE COVENANTS ARE NOT ALLOWED?

Yes, companies are prohibited from enforcing agreements that are unduly restrictive, such as not allowing an employee to engage in the same profession.

IS CONTINUED EMPLOYMENT SUFFICIENT CONSIDERATION?

Yes. Sufficient consideration to support and enforce a non-compete agreement in Indiana includes continued employment. *Ackerman v. Kimbrell Int'l, Inc.*, 652 N.E.2d 507 (Ind. 1995).

CAN BE ENFORCED AGAINST EMPLOYEES FIRED WITH OR WITHOUT CAUSE?

A restrictive covenant can still be held enforceable against a terminated employee with or without cause, as long as the employer does not materially breach the underlying employment agreement. *Gomez v. Chua Medical Corp.*, 510 N.E.2d 191 (Ind. Ct. App. 1987).

IS THE INEVITABLE DISCLOSURE DOCTRINE AVAILABLE?

The inevitable disclosure doctrine is generally not recognized in Indiana. In *Bridgestone/Firestone, Inc. v. Lockhart*, the Court did not reject the inevitable disclosure doctrine, but found that it did not apply in that case. 5 F. Supp.2d 667, 682 (S.D. Ind. 1998). In *Metals & Additives Corp, Inc. v. Hornedo*, an unpublished case, the Court declined to adopt the inevitable disclosure doctrine. 951 N.E.2d 310 (Ind. App. 2011).

IS BLUE PENCILING OR REFORMATION ALLOWED?

Blue penciling is allowed in Indiana. However, blue penciling clauses can only be used to strike language in a contract and cannot be used to re-draft contract language that deviates from terms negotiated and agreed to by the original contracting parties. *Heraeus Medical, LLC v. Zimmer, Inc.*, 135 N.E.3d 150 (Ind. 2019).

WILL VIOLATIONS EXTEND THE RESTRICTED COVENANTS?

Yes, violations will extend the covenant's terms when the contract provision permits extension.

DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON REASONABLENESS OF TEMPORAL OR GEOGRAPHIC RESTRICTIONS?

No direct statute defines presumptive limitations. "Whether the scope of a covenant's geographic restrictions is reasonable depends upon the employer's interest served by those restrictions." *Coates v. Heat Wagons, Inc.*, 942 N.E.2d 905, 915 (Ind. Ct. App. 2011). For geographical restrictions: an employer may have protectable interests in extending a radius in situations where an employee must travel to obtain clients. The Indiana Court of Appeals also enforced a covenant indefinite as to time but very narrowly limited in geographical area, in *Ebbeskotte v. Tyler*, 142 N.E.2d 905 (Ind. Ct. App. 1957).

DOES ANY STATUTE DEFINE PRESUMPTIVE PROTECTABLE

No statute defines an employer's legitimate protectable interest. Under Indiana case law, an employer's legitimate business interests include goodwill, trade

LEGITIMATE BUSINESS INTERESTS?

secrets, and confidential information. *Norlund v. Faust*, 675 N.E.2d 1142, 1154 (Ind. Ct. App. 1997).

ATTORNEYS' FEES TO THE PREVAILING PARTY?

Attorney's fees can be awarded to a prevailing party.

## Iowa

RESPONDENT

Julie T. Bittner, Esq. | [MWH Law Group LLP](#)

ARE NON-COMPETES ALLOWABLE OR OTHERWISE FAVORED?

Yes, so long as they meet the following three-prong test: 1) is the restriction reasonably necessary for the protection of the employer's business? [Yes] 2) is it unreasonably restrictive of employees' rights? [No] 3) is it prejudicial to the public interest? [No]. Must be reasonable temporally and in geographic location.

ARE EMPLOYEE AND/OR CUSTOMER NON-SOLICITATION AGREEMENTS ALLOWABLE?

Yes, for both employees and customers, under the same criteria as non-competes (collectively considered restrictive covenants).

WHAT STATE STATUTES GOVERN NON-COMPETES? IN NO STATUTE EXISTS, WHAT IS THE LEADING CASE?

No statutory authority. *Iowa Glass Depot, Inc. v. Jindrich*, 338 N.W.2d 376 (Iowa 1983).

HAS THE STATE ADOPTED THE UTSA?

Yes, Iowa Code Chapter 550.

WHAT IS THE STATUTE OF LIMITATIONS?

Non-compete/non-solicitation - general contract statute of limitations - 10 years. Iowa Code 614.1(5). UTSA - 3 years after misappropriation is discovered or should have been discovered by the exercise of reasonable diligence. Iowa Code 550.8.

ANY EXCEPTIONS TO WHICH RESTRICTIVE COVENANTS ARE NOT ALLOWED?

None, so long as the three-prong test is met.

IS CONTINUED EMPLOYMENT SUFFICIENT CONSIDERATION?

Yes. *Farm Bureau Service Co. of Maynard v. Kohls*, 203 N.W.2d 209 (Iowa 1972) and *Ehlers v. Iowa Warehouse Co.*, 188 N.W.2d 368 (Iowa 1971).

CAN BE ENFORCED AGAINST EMPLOYEES FIRED WITH OR WITHOUT CAUSE?

Yes, so long as there is no bad faith in seeking the restrictive covenant.

*Curtis 1000 v. Youngblade*, 878 F. Supp. 1224, 1258 n.35 (N.D. Iowa 1995).

IS THE INEVITABLE DISCLOSURE DOCTRINE AVAILABLE?

No authority supporting that inevitable disclosure doctrine is available.

IS BLUE PENCILING OR REFORMATION ALLOWED?

No authority supporting that blue penciling or reformation is allowed.

WILL VIOLATIONS EXTEND THE RESTRICTED COVENANTS?

Iowa Courts have used equitable principles to extend restrictive covenants. See *Presto-X-Company v. Ewing*, 442 N.W.2d 85, 90 (Iowa 1989).

DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON

N/A - no statutory authority.



REASONABLENESS OF  
TEMPORAL OF GEOGRAPHIC  
RESTRICTIONS?

DOES ANY STATUTE DEFINE  
PRESUMPTIVE PROTECTABLE  
LEGITIMATE BUSINESS  
INTERESTS?

N/A - no statutory authority.

ATTORNEYS' FEES TO THE  
PREVAILING PARTY?

Right to recover attorneys' fees is based on contract language; enforceable when contract contains attorney fee provision. Iowa Code 625.22; *Sutton v. Iowa Trenchless, L.C.*, 829 N.W.2d 590 (Iowa Ct. App. 2013).

## Kansas

RESPONDENT

Stacey Campbell, Esq. | [Campbell Litigation, P.C.](#)

ARE NON-COMPETES  
ALLOWABLE OR OTHERWISE  
FAVORED?

Yes, allowed but not favored. *Idbeis v. Wichita Surgical Specialists, P.A.*, 112 P.3d 81, 87 (Kan. 2005)

ARE EMPLOYEE AND/OR  
CUSTOMER NON-SOLICITATION  
AGREEMENTS ALLOWABLE?

Yes, Non-Compete Laws: Kansas, Practical Law State Q&A 5-523-5345.

WHAT STATE STATUTES GOVERN  
NON-COMPETES? IN NO  
STATUTE EXISTS, WHAT IS THE  
LEADING CASE?

No Statute. *Idbeis v. Wichita Surgical Specialists, P.A.*, 112 P.3d 81, 87 (Kan. 2005); *Weber v. Tillman*, 913 P.2d 84, 90 (Kan. 1996).

HAS THE STATE ADOPTED THE  
UTSA?

Yes. Kan. Stat. §§ 60-3320 et seq.

WHAT IS THE STATUTE OF  
LIMITATIONS?

5 years (breach of written contract), Kan. Stat. § 60-511; 3 years (breach of oral contract), Kan. Stat. § 60-512; 3 years (KUTSA), Kan. Stat. § 60-3325

ANY EXCEPTIONS TO WHICH  
RESTRICTIVE COVENANTS ARE  
NOT ALLOWED?

Yes. Lawyers: KS Rules of Professional Conduct 5.6; Accountants: AICPA professional standards adopted by reference in K.A.R. 74-5-2(b)(5).

IS CONTINUED EMPLOYMENT  
SUFFICIENT CONSIDERATION?

Yes. *Digital Ally, Inc. v. Corum*, 2017 WL 141876, at \*8 (D. Kan. Apr. 28, 2017).

CAN BE ENFORCED AGAINST  
EMPLOYEES FIRED WITH OR  
WITHOUT CAUSE?

Yes. No authority prohibiting enforcement depending on the matter in which the employee leaves employment.

IS THE INEVITABLE DISCLOSURE  
DOCTRINE AVAILABLE?

No, but future application possible. *Bradbury Co. v. Teissier-duCros*, 413 F. Supp. 2d 1203, 1209 (D. Kan. 2007) (Kansas has yet to address the inevitable disclosure doctrine but may find it appropriate under enumerated circumstances).

IS BLUE PENCILING OR  
REFORMATION ALLOWED?

Yes. *Puritan-Bennett Corp. v. Richter*, 657 P.2d 589, 593 (Kan. Ct. App. 1983) (Kansas courts may modify or blue pencil restrictive covenants).

WILL VIOLATIONS EXTEND THE RESTRICTED COVENANTS?

Yes, *Amedisys Inc. v. Interim Healthcare of Wichita Inc.*, 2015 WL 1912308 at \*6 (D. Kan. Apr. 27, 2015) (Equitable Tolling / Extension of the Covenant)

DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON REASONABLENESS OF TEMPORAL OF GEOGRAPHIC RESTRICTIONS?

No Statute.

DOES ANY STATUTE DEFINE PRESUMPTIVE PROTECTABLE LEGITIMATE BUSINESS INTERESTS?

No Statute.

ATTORNEYS' FEES TO THE PREVAILING PARTY?

Yes, when the right is contractual. *Idbeis v. Wichita Surgical Specialists, P.A.*, 173 P.3d 642, 646 (Kan. 2007) (Not recoverable against the defeated party in the absence of a clear and specific statutory provision or an agreement between the parties).

## Kentucky

RESPONDENT

Hope A. Comisky, Esq. | [Giesing Mazzeo Law](#)

ARE NON-COMPETES ALLOWABLE OR OTHERWISE FAVORED?

Non-compete clauses are valid and enforceable in Kentucky. There is no basic public policy against non-compete covenants, particularly where they involve professional services. The policy of Kentucky is to enforce them unless very serious inequities would result. *Kegel v. Tillotson*, 297 S.W.3d 908 (Ky. Ct. App. 2009) (reversing lower court decision refusing to enforce restrictive covenant against independent contractor and remanding for determination of unconscionability and possible use of “blue pencil”) (citing *Ceresia v. Mitchell*, 242 S.W.2d 349, 364 (Ky. Ct. App. 1951) (enforcing restrictive covenant in connection with sale of business)). See also, *Lareau v. O’Nan*, 355 S.W.2d 679, 680-1 (Ky. Ct. App. 1962) (enforcing non-compete covenant against physician but distinguishing cases where employees have very limited capacities to compete in the labor market, and it may therefore be unconscionable to deprive them of their livelihood “merely to protect the comparatively insignificant interest of the employers who had required restrictive covenants of the employee[s].”) and *Gharad v. St. Claire Medical Center, Inc.*, 443 S.W.3d 609, 612 (Ky. 2014) (acknowledging the historic approval of noncompetition covenants involving physicians).

ARE EMPLOYEE AND/OR CUSTOMER NON-SOLICITATION AGREEMENTS ALLOWABLE?

Yes, in a recent Kentucky District Court case, the court found that public interest supported the entry of a preliminary injunction to enforce terms of non-compete, non-solicitation, and non-disclosure provisions of a former employee’s employment agreement. *Material Handling Systems, Inc. v. Cabrera*, No. 3:21-cv-463-BJB-RSE, 2021 WL 5236875, \*1, at \*15 (W. D. Ky. Nov. 10, 2021) (enforcing two-year, nationwide non-compete and non-solicitation provisions against highly paid manager).

WHAT STATE STATUTES GOVERN NON-COMPETES? IN NO STATUTE EXISTS, WHAT IS THE LEADING CASE?

There are no statutes governing non-compete clauses. The leading case is *Kegel v. Tillotson* in the Kentucky Court of Appeals. *Kegel v. Tillotson*, 297 S.W.3d 908 (Ky. Ct. App. 2009).

HAS THE STATE ADOPTED THE UTSA?

Yes, it was approved in Kentucky in 1990. Ky. Rev. Stat. Ann. § 365.880-365.900 (West).

WHAT IS THE STATUTE OF LIMITATIONS?

Under the UTSA, an action for misappropriation must be brought within three years after the misappropriation is discovered or when, by the exercise of reasonable diligence, it should have been discovered. Ky. Rev. Stat. Ann. § 365.890 (West).

ANY EXCEPTIONS TO WHICH RESTRICTIVE COVENANTS ARE NOT ALLOWED?

There are no general exceptions to restrictive covenants so long as they do not violate public policy or cause serious inequities to the parties or the community. The policy of Kentucky is to enforce them unless serious inequities would result. A party seeking an injunction to prevent enforcement of a non-compete agreement must show irreparable injury as a prerequisite. *Lareau v. O'Nan*, 355 S.W.2d 679, 680 (Ky. 1962); *Daniel Boone Clinic, P.S.C. v. Dahhan*, 734 S.W.2d 488, 490 (Ky. Ct. App. 1987) (restrictive covenant for 18 months in 3 town area upheld against physician and liquidated damages provision enforced).

IS CONTINUED EMPLOYMENT SUFFICIENT CONSIDERATION?

Yes, continued employment provides sufficient consideration if: 1) the employer continues to employ the employee for an appreciable length of time after he signs the covenant, 2) the employee receives pay raises, special training or promotion after signing the agreement, and 3) the employee severs the relationship with the employer by voluntarily resigning. *Charles T. Creech, Inc. v. Brown*, 433 S.W.3d 345, 353 (Ky. 2014 (covenant signed 16 years after hire, where employee was assigned a job with less responsibility and did not receive pay raise, promotion or training during additional 2 years of employment, was not enforceable); *Central Adjustment Bureau, Inc. v. Ingram Associates, Inc.*, 622 S.W.2d 681, 685 (Ky. Ct. App. 1981) (covenant enforceable where agreement signed within weeks/months of hire, employees received raises and promotions and additional training during the 4-8 years of continued employment); *Material Handling Systems, Inc. v. Cabrera*, No. 3:21-cv-463-BJB-RSE, 2021 WL 5236875, \*1, at \*15 (W. D. Ky. Nov. 10, 2021) (enforcing non-compete and non-solicitation provisions against highly paid manager who was employed for more than two years after signing agreement and received additional training and a bonus).

CAN BE ENFORCED AGAINST EMPLOYEES FIRED WITH OR WITHOUT CAUSE?

This issue has not directly been answered by Kentucky courts. In cases where an employee was fired without cause, courts have engaged in a critical analysis. Without Cause: Where the consideration for the restriction was continued employment, and the employer did not retain an employee for a reasonable period of time after having the employee sign the restriction, the employer cannot fire the employee without cause and then seek to enforce the covenant. If the employer breaches a material provision of the employment contract, such as failure to give notice of termination, the employer may not enjoin the employee's breach of a restrictive covenant.

With Cause: If the employment contract lacks such provisions or the employer fires the employee with good cause, the restrictive covenant may be enforceable.

In both events, there must be a weighing of the equities between the parties. The conceivable degree of protection for one party should be commensurate with the conceivable loss to be suffered by the other party. *Crowell v. Woodruff*, 245 S.W.2d 447,450 (Ky. 1951) (reversing grant of injunction; one-year restrictive covenant was not enforced against production manager of dry cleaners who was terminated 4½ months after signing the agreement).

IS THE INEVITABLE DISCLOSURE DOCTRINE AVAILABLE?

Kentucky courts have not addressed the applicability of the inevitable disclosure doctrine. Surrounding states in the Sixth Circuit, like Ohio, allow the inevitable disclosure doctrine as a basis for granting injunctive relief if it was established that the former employee posed a serious threat to his former employer's business. Therefore, the doctrine is an issue of first impression for Kentucky but it may look to sister states, like Ohio, for guidance. *Hydrofarm, Inc. v. Orendorff*, 905 N.E.2d 658, 664 (Ohio Ct. App. 2008).

IS BLUE PENCILING OR REFORMATION ALLOWED?

Yes, Kentucky courts have adopted a "blue pencil" rule, whereby the courts are empowered to reform or amend restrictions in a non-compete clause if the initial restrictions are overly broad or burdensome. *Kegel v. Tillotson*, 297 S.W.3d 908, 913 (Ky. Ct. App. 2009) (citing *Hammons v. Big Sandy Claims Serv.*, 567 S.W.2d 313, 315 (Ky. Ct. App. 1978)). See also, *Ceresia v. Mitchell*, 242 S.W.2d 349, 364 (Ky. Ct. App. 1951).

WILL VIOLATIONS EXTEND THE RESTRICTED COVENANTS?

The only remedies for breaching a non-compete clause that are discussed in Kentucky case law are injunctions and damage awards.

DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON REASONABLENESS OF TEMPORAL OF GEOGRAPHIC RESTRICTIONS?

No, there is no statute on point. The general rule from Kentucky case law is that Kentucky applies the general rules that contracts in restraint of trade are not enforceable where "they are unlimited as to both time and space, or as to where they are unlimited as to space but limited as to time. However, where such contracts are unlimited as to time but are confined to a reasonable territory, they are enforceable [sic]. 17 C.J.S., Contracts, § 241 et seq., page 624." Yet, it appears that Kentucky courts may apply equitable principles and "blue pencil" the agreement to add an appropriate time or territory limitation, based on the intention of the parties when the agreement was signed, and then enforce it in appropriate circumstances. *Hodges v. Todd*, 698 S.W.2d 317, 318 (Ky. Ct. App. 1985) (lower court order refusing to enter injunction enforcing non-competition provision where agreement of sale contained a time period but no geographic limitation was reversed and remanded) (citing *Calhoun v. Everman*, 242 S.W.2d 100, 103 (Ky. 1951) (striking down an oral agreement between a dry cleaning "route man" and his employer prohibiting the employee from competing in an unspecified geographical area and for an unspecified length of time)).

DOES ANY STATUTE DEFINE PRESUMPTIVE PROTECTABLE LEGITIMATE BUSINESS INTERESTS?

No, there is no statute on point that defines legitimate business interest in support of enforcing a non-compete clause. Kentucky case law states that an agreement in restraint of trade is reasonable if, on consideration of the subject, nature of the business, situation of the parties and circumstances of the

particular case, the restriction is such only as to afford fair protection to the interests of the covenantee and is not so large as to interfere with the public interests or impose undue hardship on the restricted party. There is no specific definition of the nature of the business or the circumstances that are required in a case. *Hammons v. Big Sandy Claims Serv.*, 567 S.W.2d 313, 315 (Ky. Ct. App. 1978) (one-year non-compete enforced against insurance claims adjuster who was discharged in geographic area which was “blue penciled” by the court); *Crowell v. Woodruff*, 245 S.W.2d 447,450 (Ky. 1951).

ATTORNEYS' FEES TO THE PREVAILING PARTY?

Under the Kentucky Uniform Trade Secrets Act, if a claim of misappropriation is made in bad faith, a motion to terminate an injunction is made or resisted in bad faith, or willful and malicious misappropriation exists, the court may award reasonable attorney’s fees to the prevailing party. Ky. Rev. Stat. Ann. § 365.886 (West).

## Louisiana

RESPONDENT

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ARE NON-COMPETES ALLOWABLE OR OTHERWISE FAVORED?

Yes, the validity and enforceability of non-compete agreements in Louisiana is controlled by a single statute, La. R.S. 23:921 . The statute in the first sentence makes clear that non-compete agreements in Louisiana are unenforceable, unless the agreement fits into one of the exceptions to the general prohibition listed therein.

“[E]very contract or agreement, or provision thereof, by which anyone is restrained from exercising a lawful profession, trade or business of any kind, except as provided in this section, shall be null and void.” (Emphasis added.)

ARE EMPLOYEE AND/OR CUSTOMER NON-SOLICITATION AGREEMENTS ALLOWABLE?

Yes, non-solicitation agreements are subject to La. R.S. 23:921, which allows the prohibition of “soliciting customers” of the employer.

WHAT STATE STATUTES GOVERN NON-COMPETES? IN NO STATUTE EXISTS, WHAT IS THE LEADING CASE?

The validity and enforceability of non-compete agreements in Louisiana is controlled by a single statute, La. R.S. 23:921.

HAS THE STATE ADOPTED THE UTSA?

Yes. Louisiana adopted its version of the Uniform Trade Secrets Act in 1981. It is found in La. R.S. 51:1431 et. seq.

WHAT IS THE STATUTE OF LIMITATIONS?

For breach of contract, the limitations period — called “prescription” in Louisiana — is ten (10) years . La. C.C.Art. 3499. The UTSA’s statute of limitations is three years . La. Stat. tit. 51 § 1436

ANY EXCEPTIONS TO WHICH RESTRICTIVE COVENANTS ARE NOT ALLOWED?

Section 23:921(I) of the statute prohibits enforcement of non-complete agreements against automobile salespersons. La. R.S. 23:921(I) Automobile salespersons are the only category of exempt professionals referenced in the statute that cannot be restrained by their employers from selling automobiles . Louisiana courts have upheld this prohibition even in situations where a salesperson is performing managerial duties instead of sales. *Navarre*

	<i>Chevrolet, Inc. v. Begnaud</i> , 2016-465 (La. App. 3 Cir. 11/2/16), 205 So. 3d 973, 976, writ denied, 2016-2122 (La. 1/13/17), 215 So. 3d 248.
IS CONTINUED EMPLOYMENT SUFFICIENT CONSIDERATION?	Yes, continued employment constitutes sufficient consideration. <i>Cellular One, Inc. v. Boyd</i> , 653 So. 2d 30, 34 (La. Ct. App. 1995)
CAN BE ENFORCED AGAINST EMPLOYEES FIRED WITH OR WITHOUT CAUSE?	Under Louisiana law, unless the non-compete agreement or clause specifically provides otherwise, it is irrelevant how the employer-employee relationship terminated for purposes of enforcing non-compete obligations.
IS THE INEVITABLE DISCLOSURE DOCTRINE AVAILABLE?	An employer should not expect to enforce such a provision unless it includes the temporal and geographic restrictions required under La. Rev. Stat. § 23:92.
IS BLUE PENCILING OR REFORMATION ALLOWED?	Louisiana courts will reform a non-compete clause in limited circumstances. A non-compete clause that fails specify any valid geographical area or wholly fails under the statute cannot be reformed. <i>Navarre Chevrolet, Inc. v. Begnaud</i> , 2016-465 (La. App. 3 Cir. 11/2/16), 205 So. 3d 973, 976, writ denied, 2016-2122 (La. 1/13/17), 215 So. 3d 248; See <i>Paradigm Health System, LLC</i> , 218 So.3d at 1071 (non-compete agreement, which was invalid and unenforceable due to its overly broad language, could not be reformed because, once the offending portions were stricken, there was no language in the agreement that could be construed to prohibit the conduct of which employer complained). Without any specified geographic area, the non-compete clause cannot stand on its own and cannot be reformed. <i>Total Safety U.S., Inc. v. Code Red Safety &amp; Rental, LLC</i> , 423 F. Supp. 3d 309, 315 (E.D. La. 2019). However, if the non-compete clause contains an overbroad catch-all statement in addition to a valid geographic limitation, the court will remove the overbroad catch-all statement and enforce the remainder of the valid non-compete clause. <i>Brock Servs., L.L.C. v. Rogillio</i> , 936 F.3d 290, 293 (5th Cir. 2019). Further, an agreement containing an invalid non-compete clause can be severed and enforced as long as the agreement contains a severability clause. <i>Buckeye Garment Rental Co. v. Jones</i> , 276 F. Supp. 560, 562 (E.D. La. 1967). Because courts in Louisiana are reluctant to reform and sever non-compete agreements, the safest practice for employers would be to draft non-compete clauses that strictly comply with the statute.
WILL VIOLATIONS EXTEND THE RESTRICTED COVENANTS?	No, preliminary injunction could only extend two years from the date of employee's termination rather than date of trial court's judgment. <i>Smith v. Com. Flooring Gulf Coast, L.L.C.</i> , 2019-0502 (La. App. 4 Cir. 10/9/19).
DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON REASONABLENESS OF TEMPORAL OF GEOGRAPHIC RESTRICTIONS?	<p>To be enforceable, a non-compete or non-solicitation agreement may only be for a maximum of two years from the employee's termination date (La. R.S. 23:921(C)). Louisiana courts strictly enforce this rule and have voided agreements imposing longer terms. <i>Allied Bruce Terminix Cos., Inc. v. Ferrier</i>, 634 So. 2d 44, 45 (La. Ct. App. 1994).</p> <p>An agreement is not expressly required by the language of La. R.S. 23:921 to identify the geographic limitation by explicitly listing the name of the parish or municipality. However, most Louisiana courts do not enforce non-competes unless the parishes and municipalities are named and void agreements where the geographic limitation is determined by a radius from a certain point. <i>Aon Risk Servs.</i>, 807 So. 2d at 1061.</p>

DOES ANY STATUTE DEFINE PRESUMPTIVE PROTECTABLE LEGITIMATE BUSINESS INTERESTS?

The single statute controlling non-compete, i.e., La. R.S. 23:921, does not define presumptive, protectable, legitimate business interests.

ATTORNEYS' FEES TO THE PREVAILING PARTY?

Generally, an employer may not recover its attorneys' fees in an action to enforce a covenant not to compete. The statute provides only for the recovery of loss profit and injunctive relief. However, attorneys' fees may be recoverable if contractually agreed upon by the parties. *Newport Ltd. v. Sears, Roebuck & Co.*, No. CIV. A. 86-2319, 1995 WL 688799, at \*2 (E.D. La. Nov. 21, 1995) (as a general rule under Louisiana law, attorneys' fees are recoverable only where authorized by statute or contract).

## Maine

RESPONDENT

Mishell B. Kneeland, Esq. | [Culhane Meadows PLLC](#)

ARE NON-COMPETES ALLOWABLE OR OTHERWISE FAVORED?

Yes.

ARE EMPLOYEE AND/OR CUSTOMER NON-SOLICITATION AGREEMENTS ALLOWABLE?

Yes. But for agreements entered into or renewed after September 18, 2019, only if the employee makes in excess of 400% of the federal poverty level

WHAT STATE STATUTES GOVERN NON-COMPETES? IN NO STATUTE EXISTS, WHAT IS THE LEADING CASE?

26 MRSA §§599-A (general statute); 26 MRSA § 599 (governs non-competes in the broadcast industry)

HAS THE STATE ADOPTED THE UTSA?

Yes. 10 MRSA 1541, et seq. But did not adopt UTSA Section 8 did not enact section, which requires courts in the state to apply and construe their state statute to effectuate the general purpose of making trade secret law uniform.

WHAT IS THE STATUTE OF LIMITATIONS?

4 years. La. C.C.Art. 3499.

ANY EXCEPTIONS TO WHICH RESTRICTIVE COVENANTS ARE NOT ALLOWED?

Workers below the poverty level.

IS CONTINUED EMPLOYMENT SUFFICIENT CONSIDERATION?

Yes.

CAN BE ENFORCED AGAINST EMPLOYEES FIRED WITH OR WITHOUT CAUSE?

Likely.

IS THE INEVITABLE DISCLOSURE DOCTRINE AVAILABLE?

No.

IS BLUE PENCILING OR REFORMATION ALLOWED?

Yes.



WILL VIOLATIONS EXTEND THE RESTRICTED COVENANTS?

No.

DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON REASONABLENESS OF TEMPORAL OF GEOGRAPHIC RESTRICTIONS?

No.

DOES ANY STATUTE DEFINE PRESUMPTIVE PROTECTABLE LEGITIMATE BUSINESS INTERESTS?

No.

ATTORNEYS' FEES TO THE PREVAILING PARTY?

## Maryland

RESPONDENT

Kate Lawrence, Esq. | [Lawrence Law](#)

ARE NON-COMPETES ALLOWABLE OR OTHERWISE FAVORED?

Non-competes are allowable in Maryland under certain conditions. Non-competes in Maryland are generally permitted if: (1) there is adequate consideration, (2) they are ancillary to the employment contract, (3) the restraints are limited in geographic scope and duration to what is reasonably necessary to protect the employer's business, (4) they do not impose undue hardship on the employees, and (5) they are not against the public interest. See *Becker v. Bailey*, 268 Md. 93, 96 (1973). If those factors are satisfied, Maryland courts will consider four more factors as follows: (1) whether the employee is an unskilled worker whose services are not unique, (2) whether the employee is exploiting close personal contacts with the employer's customers, (3) whether the non-compete is necessary to prevent the misuse of the employer's (a) established customer relationships, (b) trade secrets, (c) sales or delivery routes, or (d) customer or client lists, and (4) whether enforcement would impose undue hardship on the employee or disregard public interest. See *Budget Rent A Car of Wash., Inc. v. Raab*, 268 Md. 478, 482 (1973).

ARE EMPLOYEE AND/OR CUSTOMER NON-SOLICITATION AGREEMENTS ALLOWABLE?

Employee and customer non-solicitation agreements are allowable in Maryland. See, e.g., *Tuttle v. Riggs-Warfield-Roloson, Inc.*, 251 Md. 45, 47–49 (1968); *Gill v. Computer Equip. Corp.*, 266 Md. 170, 180 (1972); *Fowler v. Printers II, Inc.*, 89 Md. App. 448, 464–66 (1991).

WHAT STATE STATUTES GOVERN NON-COMPETES? IN NO STATUTE EXISTS, WHAT IS THE LEADING CASE?

MD. CODE ANN., LAB. & EMPL. § 3-716 (West 2019) governs non-compete agreements concerning employees who earn equal to or less than \$15.00 per hour or \$31,200 annually. For employees who earn more than the § 3-716 threshold, there is no statute governing non-compete clauses. The leading cases in Maryland concerning non-compete clauses are *Becker*, 268 Md. at 96 and *Raab*, 268 Md. at 482.



HAS THE STATE ADOPTED THE UTSA?	Maryland has codified the Maryland Uniform Trade Secrets Act, which is based almost entirely on the UTSA. See MD. CODE ANN., COM. LAW §§ 11-1201–09 (West 2011).
WHAT IS THE STATUTE OF LIMITATIONS?	The statute of limitations in Maryland for breach of contract actions is three years. See MD. CODE ANN., CTS. & JUD. PROC. § 5-101 (West 2014).
ANY EXCEPTIONS TO WHICH RESTRICTIVE COVENANTS ARE NOT ALLOWED?	Restrictive covenants are not allowed if they do not meet certain requirements. See Answer No. 1.
IS CONTINUED EMPLOYMENT SUFFICIENT CONSIDERATION?	Continued employment is sufficient consideration to support a non-compete agreement in Maryland. See <i>Simko Inc. v. Graymar Co.</i> , 55 Md. App. 561, 564–65 (1983).
CAN BE ENFORCED AGAINST EMPLOYEES FIRED WITH OR WITHOUT CAUSE?	Maryland non-compete clauses can be enforced against employees fired for cause. See, e.g., <i>Hebb v. Stump, Harvey &amp; Cook, Inc.</i> , 25 Md. App. 478, 487 (1975) (“The Court concludes that the noncompetition provisions set forth in Paragraph 4 are applicable and binding where the employee has ‘ceased’ to be employed, even though the termination of the employment was ‘for cause.’”). However, at least one Maryland court has stated that if an employee is terminated without cause, an employer may not be able to enforce a non-compete clause. See, e.g., <i>MacIntosh v. Brunswick Corp.</i> , “[S]ince the employee was discharged through no fault of his own . . . it is apparent that the duration of the restrictive covenant had the effect of imposing undue hardship on the employee.”).
IS THE INEVITABLE DISCLOSURE DOCTRINE AVAILABLE?	Maryland has not adopted the doctrine of inevitable disclosure. See <i>LeJeune v. Coin Acceptors, Inc.</i> , 381 Md. 288, 318 (2004).
IS BLUE PENCILING OR REFORMATION ALLOWED?	Maryland courts are permitted to blue pencil non-compete agreements. See <i>Tawney v. Mut. Sys. of Md., Inc.</i> , 186 Md. 508, 521 (1946). However, blue penciling in Maryland is limited to removing language in a non-compete agreement. <i>Fowler</i> , 89 Md. App. at 465–66. Maryland courts do not allow the addition of words or phrases to a non-compete agreement. <i>Id.</i>
WILL VIOLATIONS EXTEND THE RESTRICTED COVENANTS?	Maryland courts have not directly addressed whether equitable extensions of restrictive covenants are permitted. See <i>Padco Advisors, Inc. v. Omdahl</i> , 179 F.Supp.2d 600, 613 (D. Md. 2002) (“Maryland courts have not spoken directly to” whether equitable extensions are permissible.”); see also <i>Padco Advisors, Inc. v. Omdahl</i> , 185 F.Supp.2d 575, 577 (D. Md. 2002) (holding that an equitable extension was not appropriate where grounds for a permanent injunction were found); <i>Nationwide Mut. Ins. Co. v. Hart</i> , 73 Md. App. 406, 413 (1988) (“Although restrictive covenants . . . have been upheld, the covenants in those cases when into effect on the date the employment contract was terminated, not some indefinite date in the future.”).
DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON REASONABLENESS OF TEMPORAL OR GEOGRAPHIC RESTRICTIONS?	Maryland does not have a statute that defines limitations on reasonableness of temporal or geographic restrictions. Maryland courts have held that temporal restrictions of two years are reasonable. See, e.g., <i>Millward v. Gerstung Int’l Sports Educ., Inc.</i> , 268 Md. 483, 486, 489 (1973); <i>Gill v. Comput. Equip. Corp.</i> , 266 Md. 170, 181 (1972); <i>Ruhl v. F.A. Bartlett Tree Expert Co.</i> , 245 Md. 118, 128

(1967). Maryland courts have been less uniform regarding geographic restrictions, but have consistently enforced geographic restrictions encompassing the former employer's territory. See *TEKsystems, Inc. v. Bolton*, No. RDB-08-3099, 2010 WL 447782, at \*5 (D. Md. Feb. 4, 2010) (upholding a non-compete agreement restricting employee from working within a 50-mile radius of the former employer, in part, because a 50-mile radius is "facially reasonable"); *NaturaLawn of Am. v. W. Grp., LLC*, 484 F. Supp. 2d 392, 400 (D. Md. 2007) (upholding a non-compete agreement restricting employee from working within a 20-mile radius of the former employer's licenses territory); Ruhl, 245 Md. at 128 (upholding a non-compete agreement restricting employee from working in the six counties, which the court noted were not "densely populated area[s]", he had worked in while employed by the former employer).

DOES ANY STATUTE DEFINE PRESUMPTIVE PROTECTABLE LEGITIMATE BUSINESS INTERESTS?

Maryland does not have any statute that defines presumption, protectable, legitimate business interests.

ATTORNEYS' FEES TO THE PREVAILING PARTY?

There is no prohibition on including attorneys' fees to prevailing party provisions in Maryland non-compete agreements. See *Thomas v. Gladstone*, 386 Md. 693, 699 (2005) ("Under the common law 'American Rule' applied in Maryland, the prevailing party in a lawsuit may not recover attorneys' fees as an element of damages or costs unless . . . the parties to a contract have an agreement to that effect . . .").

## Massachusetts

RESPONDENT

Sara Schwartz, Esq. | [Schwartz Hannum PC](#)

ARE NON-COMPETES ALLOWABLE OR OTHERWISE FAVORED?

Yes

ARE EMPLOYEE AND/OR CUSTOMER NON-SOLICITATION AGREEMENTS ALLOWABLE?

Yes

WHAT STATE STATUTES GOVERN NON-COMPETES? IN NO STATUTE EXISTS, WHAT IS THE LEADING CASE?

The MA non-compete reform statute, M.G.L. c. 149, Sec. 24, governs non-competes entered into beginning October 2018. As to non-competes predating October 2018, see *Whitinsville Plaza, Inc. v. Kotseas*, 378 Mass. 85 (1979)

HAS THE STATE ADOPTED THE UTSA?

Yes

WHAT IS THE STATUTE OF LIMITATIONS?

Six years, the usual limitations period for contract actions. As a practical matter, however, most employers will pursue injunctive relief during the life of the non-competition covenant itself.

ANY EXCEPTIONS TO WHICH RESTRICTIVE COVENANTS ARE NOT ALLOWED?	Under the reform statute, non-competes cannot be enforced against non-exempt employees, student interns, employees terminated involuntarily without cause, and employees 18 or younger. Additionally, non-competes are not enforceable against employees in certain professions, including doctors and lawyers.
IS CONTINUED EMPLOYMENT SUFFICIENT CONSIDERATION?	No - under the reform statute, there must be additional consideration beyond continued employment.
CAN BE ENFORCED AGAINST EMPLOYEES FIRED WITH OR WITHOUT CAUSE?	No
IS THE INEVITABLE DISCLOSURE DOCTRINE AVAILABLE?	No, though a court may consider this as a factor in determining whether to grant injunctive relief enforcing a covenant not to compete.
IS BLUE PENCILING OR REFORMATION ALLOWED?	Yes
WILL VIOLATIONS EXTEND THE RESTRICTED COVENANTS?	Yes but only if an employee has breached a fiduciary duty or has unlawfully taken property of the employer.
DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON REASONABLENESS OF TEMPORAL OR GEOGRAPHIC RESTRICTIONS?	Yes. Under the reform statute, non-competes are generally limited to one year, except that specific wrongful acts by an employee may extend this period to two years. Geographically, non-competes are limited to those areas in which the employee provided services or had a material presence or influence.
DOES ANY STATUTE DEFINE PRESUMPTIVE PROTECTABLE LEGITIMATE BUSINESS INTERESTS?	The reform statute defines protectable interests as trade secrets, confidential information, and employer goodwill.
ATTORNEYS' FEES TO THE PREVAILING PARTY?	Only if there is a fee-shifting provision in the agreement or if other statutory grounds exist (e.g., the suit is frivolous).

## Michigan

RESPONDENT	Deborah Brouwer, Esq.   <a href="#">Nemeth Bonnette Brouwer PC</a>
ARE NON-COMPETES ALLOWABLE OR OTHERWISE FAVORED?	<p>Yes. Michigan allows and enforces non-compete agreements that are determined to be "reasonable." The reasonability of a non-competition agreement is determined by balancing the employer's competitive business interests with the employee's right to work and obtain a living in his/her respective field. Michigan considers certain factors when evaluating the reasonableness of a non-compete agreement:</p> <ul style="list-style-type: none"> <li>• The line of business or type of employment;</li> <li>• Geographical area designation;</li> <li>• The duration of the agreement;</li> <li>• The competitive business interest that the employer is seeking to protect.</li> </ul>

ARE EMPLOYEE AND/OR CUSTOMER NON-SOLICITATION AGREEMENTS ALLOWABLE?

Yes, like non-competition provisions, non-solicitation agreements are enforceable in Michigan under certain circumstances. Michigan looks at the provisions in the agreement to ensure that their central purpose is to protect a legitimate business interest of the employer, and is not simply another competitive tactic. Non-solicitation agreements are to be reasonably drawn as to duration, geographical scope, and line of business to be enforceable.

WHAT STATE STATUTES GOVERN NON-COMPETES? IN NO STATUTE EXISTS, WHAT IS THE LEADING CASE?

Michigan Antitrust Reform Act (MARA): "An employer may obtain from an employee an agreement or covenant which protects an employer's reasonable competitive business interests and expressly prohibits an employee from engaging in employment or a line of business after termination of employment if the agreement or covenant is reasonable as to its duration, geographical area, and the type of employment or line of business. To the extent any such agreement or covenant is found to be unreasonable in any respect, a court may limit the agreement to render it reasonable in light of the circumstances in which it was made and specifically enforce the agreement as limited." Mich. Comp. Laws § 445.774a(1). Michigan Rule of Professional Conduct 5.6 governs non-compete agreements involving attorneys.

HAS THE STATE ADOPTED THE UTSA?

Yes. Michigan has its own version of the UTSA the Michigan Uniform Trade Secret Act ("MUTSA"). MUTSA aims to protect certain trade secrets and to prohibit disclosure of trade secrets. Mich. Comp. Laws § 445.1901, et seq.

WHAT IS THE STATUTE OF LIMITATIONS?

An action under MUTSA must be brought within 3 years after the misappropriation is discovered or by reasonable diligence should have been discovered. Mich. Comp. Laws § 445.1907.

ANY EXCEPTIONS TO WHICH RESTRICTIVE COVENANTS ARE NOT ALLOWED?

Under Michigan Rule of Professional Conduct Rule 5.6, an attorney is prohibited from offering an employment agreement that restricts an attorney from practicing after ending the relationship except for agreements involving retirement benefits or the sale of a law practice.

IS CONTINUED EMPLOYMENT SUFFICIENT CONSIDERATION?

Yes. Continued employment is sufficient consideration to enforce a non-compete agreement; subject to an exception where an employer is already obligated to retain an employee, "continuing employment [with a firm that has been acquired by another] is enough consideration to support an employment agreement entered into with a new employer." This includes an employer that has acquired the business for which the employee was working at the time of acquisition. *Lowry Computer Prods. Inc., v. Head*, 984 F.Supp.1111, 1115 (E.D. Mich. 2015); *QIS, Inc. v. Indus. Quality Control, Inc.*, 262 Mich App 592, 593 (2004)(continued employment is sufficient for at-will employees, but not just cause employees); but see *Williams v. FCA US LLC*, 2018 WL 2364068 (E.D. Mich. May 24, 2018)(continued employment can manifest assent to an arbitration agreement only "when the employee knows that continued employment manifests assent.").

CAN BE ENFORCED AGAINST EMPLOYEES FIRED WITH OR WITHOUT CAUSE?

Yes. In *Coates v. Bastian Brothers, Inc.*, the Court of Appeals held that the former employee's termination without cause did not bar the former employer from enforcing the noncompete agreement. 276 Mich App 498 (2007).

IS THE INEVITABLE DISCLOSURE DOCTRINE AVAILABLE?

Michigan courts have yet to formally adopt the “inevitable disclosure” doctrine. The Michigan Court of Appeals addressed it briefly, but held that “for a party to make a claim of threatened misappropriation, whether under a theory of inevitable disclosure or otherwise, the party must establish more than the existence of generalized trade secrets and a competitor’s employment of the party’s former employee who has knowledge of trade secrets.” *CMI Intern., Inc. v. Internet Intern. Corp.*, 251 Mich App 125 (2002). That court acknowledged that federal authorities have held that the inevitable disclosure theory allows a plaintiff to prove misappropriation by demonstrating that the defendant’s new employment will inevitably lead it to rely on the plaintiff’s trade secrets. *Id.* at 132-33.

IS BLUE PENCILING OR REFORMATION ALLOWED?

Michigan courts are permitted to modify overly broad covenants to narrow restrictions to the extent needed to protect the employer’s legitimate interests. The “rule of reasonableness” contained in the Michigan Antitrust Reform Act states: “To the extent any such agreement or covenant is found to be unreasonable in any respect, a court may limit the agreement to render it reasonable in light of the circumstances in which it was made and specifically enforce the agreement as limited.” Mich. Comp. Laws §445.774a(1)

WILL VIOLATIONS EXTEND THE RESTRICTED COVENANTS?

"[I]n appropriate circumstances, the term of a noncompetition agreement may be extended beyond its stated expiration date." *Thermatool Corp. v. Borzym*, 227 Mich App 366, 375 (1998). Appropriate circumstances may include those "cases where a party has flouted the terms of a noncompetition agreement" or where it is not possible "to determine monetary damages with any degree of certainty." *Id.*

DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON REASONABLENESS OF TEMPORAL OR GEOGRAPHIC RESTRICTIONS?

No direct statute defines reasonableness. Michigan courts have upheld a period of time ranging from six months to three years. As to geographical reasonableness, the Eastern District of Michigan held that an unlimited geographical scope is reasonable if the plaintiff’s business is sufficiently national and international in scope. *Superior Consulting, Inc. v. Walling*, 851 F. Supp. 847 (E.D. Mich. 1994).

DOES ANY STATUTE DEFINE PRESUMPTIVE PROTECTABLE LEGITIMATE BUSINESS INTERESTS?

No. Under the Michigan Antitrust Reform Act, for a restrictive covenant to be enforceable, any non-compete must protect an employer’s “reasonable competitive business interests” and must be “reasonable as to its duration, geographical area, and the type of employment or line of business” Mich. Comp. Laws. § 445.774a. The agreement cannot be read to extend beyond an employer’s reasonable competitive business interest. The reasonableness of a non-compete agreement is not analyzed in the abstract but rather in the context of the employer’s particular business interest and the function and knowledge of the employee in controversy. *Whirlpool Corp. v. Burns*, 457 F.Supp.2d 806, 812 (W.D. Mich. 2006). Merely preventing all competition is not a legitimate business interest; the noncompete agreement must prevent the employee from gaining an unfair advantage in competition with the employer. *Radio One, Inc. v. Wooten*, 452 F.Supp.2d 754, 757 (E.D. Mich. 2006).

ATTORNEYS' FEES TO THE PREVAILING PARTY?

Attorneys' fees may be awarded to a prevailing party under MUTSA for (1) misappropriation claims brought in bad faith, (2) motions to terminate

injunctions made or resisted in bad faith, or (3) willful and malicious misappropriation. Mich. Comp. Laws § 445.1905. Generally, fees for breach of contract may be awarded only where the contract provides for such fees. *Kelly Services, Inc. v. Steno*, 760 Fed.Appx. 379 (6th Cir. 2019).

## Minnesota

RESPONDENT	Sonia Miller-Van Oort, Esq.   <a href="#">Sapientia Law Group</a>
ARE NON-COMPETES ALLOWABLE OR OTHERWISE FAVORED?	Allowable, but disfavored
ARE EMPLOYEE AND/OR CUSTOMER NON-SOLICITATION AGREEMENTS ALLOWABLE?	Yes
WHAT STATE STATUTES GOVERN NON-COMPETES? IN NO STATUTE EXISTS, WHAT IS THE LEADING CASE?	No statute. The leading case is <i>Bennett v. Storz Broadcasting Co.</i> , 270 Minn. 525, 534, 134 N.W.2d 892, 899 (1965)
HAS THE STATE ADOPTED THE UTSA?	Yes. Minn. Stat. Ann. 325C.01
WHAT IS THE STATUTE OF LIMITATIONS?	Three years. Minn. Stat. Ann. § 325C.01. Six years breach of contract
ANY EXCEPTIONS TO WHICH RESTRICTIVE COVENANTS ARE NOT ALLOWED?	Absence of geographic bounds or territorial limitations can render the terms overbroad and unenforceable.
IS CONTINUED EMPLOYMENT SUFFICIENT CONSIDERATION?	No. Independent consideration must exist to support a non-compete entered into after the original employment contract.
CAN BE ENFORCED AGAINST EMPLOYEES FIRED WITH OR WITHOUT CAUSE?	Minnesota Courts have declined to enforce noncompete clauses when the employee has been wrongfully terminated.
IS THE INEVITABLE DISCLOSURE DOCTRINE AVAILABLE?	No cases address this issue in Minnesota.
IS BLUE PENCILING OR REFORMATION ALLOWED?	Yes
WILL VIOLATIONS EXTEND THE RESTRICTED COVENANTS?	Not likely
DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON REASONABLENESS OF TEMPORAL OR GEOGRAPHIC RESTRICTIONS?	No presumptive limitations. When assessing the duration of a restrictive covenant, courts consider two factors: “(1) the length [of time] necessary to obliterate the identification between employer and employee in the minds of the employer's customers, and (2) the length of time necessary for an employee's replacement to obtain licenses and learn the fundamentals of the business.”

DOES ANY STATUTE DEFINE PRESUMPTIVE PROTECTABLE LEGITIMATE BUSINESS INTERESTS?

Yes, Minn. Stat. Ann. § 325C.01 (Subd. 5) defines Trade secret.

ATTORNEYS' FEES TO THE PREVAILING PARTY?

Yes, under MN UTSA if (i) a claim of misappropriation is made in bad faith, (ii) a motion to terminate an injunction is made or resisted in bad faith, or (iii) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party. Minn. Stat. Ann. § 325C.04

## Mississippi

RESPONDENT

Lisa Lawson, Esq. | [Lawson & Lawson LLP](#)

ARE NON-COMPETES ALLOWABLE OR OTHERWISE FAVORED?

Non-compete agreements disfavored and unenforceable unless drafted to be reasonable in geographic scope and duration. Courts also evaluate provision's "effect on 'the rights of the employer, the rights of the employee, and the rights of the public,' and balance these respective interests." *Bus. Commc'ns, Inc. v. Banks*, 91 So. 3d 1, 10-11 (Miss. Ct. App. 2011).

ARE EMPLOYEE AND/OR CUSTOMER NON-SOLICITATION AGREEMENTS ALLOWABLE?

Courts generally determine enforceability of non-solicitation agreements by using same general standards applied to non-competition agreements. *Empiregas, Inc. of Kosciusko v. Bain*, 499 So. 2d 971, 976 (Miss. 1992); c.f., *Brown and Brown of Mississippi, LLC v. Baker*, 2018 WL8805937 at \*3 (citing *TLS Mgmt. Servs., LLC v. Mardis Fin. Servs., Inc.*, No. 2016 WL 6999480 at \*6 (S.D. Miss. 2016)) ("Mississippi courts have not yet addressed the issue of whether non-solicitation clauses are governed by the same standards as non-competition clauses, but other courts have held that these two types of clauses are 'governed by separate inquiries'").

WHAT STATE STATUTES GOVERN NON-COMPETES? IN NO STATUTE EXISTS, WHAT IS THE LEADING CASE?

None.

HAS THE STATE ADOPTED THE UTSA?

Yes. Miss. Code Ann. §§ 75-26-1 through 75-26-19.

WHAT IS THE STATUTE OF LIMITATIONS?

3 years. Miss. Code Ann. § 75-26-13.

ANY EXCEPTIONS TO WHICH RESTRICTIVE COVENANTS ARE NOT ALLOWED?

Attorneys. Miss. R. Prof'l Cond. 5.6.

IS CONTINUED EMPLOYMENT SUFFICIENT CONSIDERATION?

Yes. *Frierson v. Shepphard Bldg. Sup. Co.*, 154 So.2d 151 (Miss. S. Ct.1963); *Raines v. Bottrell Ins. Agency*, 992 So.2d 642 (Miss. Ct. App. 2008).

CAN BE ENFORCED AGAINST EMPLOYEES FIRED WITH OR WITHOUT CAUSE?

May be enforceable against discharged employees, but will depend on circumstances surrounding the discharge.



IS THE INEVITABLE DISCLOSURE DOCTRINE AVAILABLE?

Mississippi courts have not applied the doctrine.

IS BLUE PENCILING OR REFORMATION ALLOWED?

Courts will reform unreasonable non-compete clause to include reasonable limitations. *Redd Pest Control Co. v. Heatherly*, 248 Miss. 34, 157 So. 2d 133 (Miss. 1963).

WILL VIOLATIONS EXTEND THE RESTRICTED COVENANTS?

No, unless there is an express tolling agreement between the parties.

DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON REASONABLENESS OF TEMPORAL OR GEOGRAPHIC RESTRICTIONS?

No statute.

DOES ANY STATUTE DEFINE PRESUMPTIVE PROTECTABLE LEGITIMATE BUSINESS INTERESTS?

No.

ATTORNEYS' FEES TO THE PREVAILING PARTY?

Employer may not generally recover its attorneys' fees in action to enforce covenant not to compete. Attorneys' fees may be recoverable if contractually agreed upon by the parties, allowed by statute, or punitive damages are warranted. E.g., *Stanton & Assoc., Inc. v. Bryant Constr. Co., Inc.*, 464 So. 2d 499, 502 (Miss. 1985).

## Missouri

RESPONDENT

Stacey Campbell, Esq. | [Campbell Litigation, P.C.](#)

ARE NON-COMPETES ALLOWABLE OR OTHERWISE FAVORED?

Yes, allowed but not favored. Mo. Rev. Stat. § 416.031 (non-compete agreements considered unlawful restraints of trade, enforceable only under limited circumstances and when reasonable).

ARE EMPLOYEE AND/OR CUSTOMER NON-SOLICITATION AGREEMENTS ALLOWABLE?

Employee nonsolicitation agreements permissible, subject to Mo. Rev. Stat. § 431.202; customer nonsolicitation agreements permissible, subject to reasonableness standards (*Whelan Sec. Co. v. Kennebrew*, 379 S.W.3d 835, 842 (Mo. 2012)).

WHAT STATE STATUTES GOVERN NON-COMPETES? IN NO STATUTE EXISTS, WHAT IS THE LEADING CASE?

Mo. Rev. Stat. §§ 416.031; 431.202

HAS THE STATE ADOPTED THE UTSA?

Yes. Mo. Rev. Stat. §§ 417.450 et seq.

WHAT IS THE STATUTE OF LIMITATIONS?

5 years (MUTSA), Mo. Rev. Stat. § 417.461; 5 years (actions upon contracts not for payment of money or property), Mo. Rev. Stat. § 516.120(1).



ANY EXCEPTIONS TO WHICH RESTRICTIVE COVENANTS ARE NOT ALLOWED?	Yes. Secretarial and Clerical Services (employee nonsolicitation agreements only): Mo. Rev. Stat. § 431.202; Lawyers: MO Rules BAR Rule 4-5.6
IS CONTINUED EMPLOYMENT SUFFICIENT CONSIDERATION?	Yes. <i>Comput. Sales Int'l, Inc. v. Collins</i> , 723 S.W.2d 450, 451-52 (Mo. Ct. App. 1986).
CAN BE ENFORCED AGAINST EMPLOYEES FIRED WITH OR WITHOUT CAUSE?	Mixed. If employee fired for cause, employers may seek injunction for breaches of noncompete/nonsolicitation agmts. If fired without cause (but not wrongfully), court in equity may decline to enforce noncompete via injunction, but may enforce customer nonsolicit agmts. <i>Prop. Tax Representatives, Inc. v. Chatam</i> , 891 S.W.2d 153, 156-8 (Mo. Ct. App. 1995).
IS THE INEVITABLE DISCLOSURE DOCTRINE AVAILABLE?	No. <i>Panera, LLC v. Nettles</i> , 2016 WL 4124114, at *4 (E.D. Mo. Aug. 3, 2016) (Court recognized that the doctrine of inevitable disclosure has not been formally adopted in Missouri).
IS BLUE PENCILING OR REFORMATION ALLOWED?	Yes. <i>Mid-States Paint &amp; Chem. Co. v. Herr</i> , 746 S.W.2d 613, 616 (Mo. Ct. App. 1988).
WILL VIOLATIONS EXTEND THE RESTRICTED COVENANTS?	Yes, tolling of the restrictive covenant pending litigation is permissible. <i>Furniture Mfg. Corp. v. Joseph</i> , 900 S.W.2d 642, 649 (Mo. Ct. App. 1995).
DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON REASONABLENESS OF TEMPORAL OR GEOGRAPHIC RESTRICTIONS?	Yes, as to employee nonsolicitation agmts. Mo. Rev. Stat. 431.202 (presumptively valid temporal limitations).
DOES ANY STATUTE DEFINE PRESUMPTIVE PROTECTABLE LEGITIMATE BUSINESS INTERESTS?	No Statute.
ATTORNEYS' FEES TO THE PREVAILING PARTY?	Yes, when the right is contractual. <i>Jackes-Evans Mfg. Co. v. Christen</i> , 848 S.W.2d 553, 557 (Mo. Ct. App. 1993).

## Montana

RESPONDENT	Stacey Campbell, Esq.   <a href="#">Campbell Litigation, P.C.</a>
ARE NON-COMPETES ALLOWABLE OR OTHERWISE FAVORED?	Yes, allowed but not favored. Mont. Code §§ 28-2-703- through -705.
ARE EMPLOYEE AND/OR CUSTOMER NON-SOLICITATION AGREEMENTS ALLOWABLE?	Yes, Mont. Code §§ 28-2-703 through -705.
WHAT STATE STATUTES GOVERN NON-COMPETES? IN NO STATUTE EXISTS, WHAT IS THE LEADING CASE?	Mont. Code An. §§ 28-2-703 through -705

HAS THE STATE ADOPTED THE UTSA?	Yes. Mont. Code §§ 30-14-401 et seq.
WHAT IS THE STATUTE OF LIMITATIONS?	3 years (MUTSA) Mont. Code § 30-14-407; 8 years (breach of written contract) Mont. Ann. § 27-2-202(1); 5 years (breach of unwritten contract/promise) Mont. Ann. § 27-2-202(2).
ANY EXCEPTIONS TO WHICH RESTRICTIVE COVENANTS ARE NOT ALLOWED?	Yes. Attorneys, MT R RPC Rule 5.6.
IS CONTINUED EMPLOYMENT SUFFICIENT CONSIDERATION?	No. <i>Access Organics, Inc. v. Hernandez</i> , 175 P.3d 899, 904–05 (Mont. 2008).
CAN BE ENFORCED AGAINST EMPLOYEES FIRED WITH OR WITHOUT CAUSE?	No. <i>Wrigg v. Junkermier, Clark, Campanella, Stevens, P.C.</i> , 265 P.3d 646, 653-54 (Mont. 2011) (policy considerations justifying noncompetes generally not applicable when employer terminates employment relationship).
IS THE INEVITABLE DISCLOSURE DOCTRINE AVAILABLE?	No. Montana courts have not addressed the doctrine of inevitable disclosure. Non-Compete Laws: Montana, Practical Law State Q&A w-007-2327
IS BLUE PENCILING OR REFORMATION ALLOWED?	Yes. <i>Dumont v. Tucker</i> , 822 P.2d 96, 98 (Mont. 1991)
WILL VIOLATIONS EXTEND THE RESTRICTED COVENANTS?	Unknown (no case law on issue).
DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON REASONABLENESS OF TEMPORAL OR GEOGRAPHIC RESTRICTIONS?	No Statute.
DOES ANY STATUTE DEFINE PRESUMPTIVE PROTECTABLE LEGITIMATE BUSINESS INTERESTS?	No Statute.
ATTORNEYS' FEES TO THE PREVAILING PARTY?	Yes, when the right is contractual. <i>Mungas v. Great Falls Clinic, LLP</i> , 221 P.3d 1230, 1238 (Mont. 2009) (only awardable via specific contractual or statutory provision).

## Nebraska

RESPONDENT	Julie T. Bittner, Esq.   <a href="#">MWH Law Group LLP</a>
ARE NON-COMPETES ALLOWABLE OR OTHERWISE FAVORED?	Allowable so long as the non-compete is reasonable based on the following factors: 1) reasonable in the sense that it is not injurious to the public; 2) not greater than is reasonably necessary to protect the employer in some legitimate interest, and 3) not unduly harsh and oppressive on the employee. <i>Aon Consulting v. Midlands Fin. Benefits</i> , 275 Neb. 642, 653, 748 N.W.2d 626, 638 (2008); <i>Gaver v. Schneider's O.K. Tire Co.</i> , 289 Neb. 491, 499, 856 N.W.2d 121, 127 (2014). Must be reasonable temporally and in geographic location.

ARE EMPLOYEE AND/OR CUSTOMER NON-SOLICITATION AGREEMENTS ALLOWABLE?	Yes for customers, but must be limited to solicitation of clients/customers of former employer with whom the former employee actually had contact. <i>Softchoice Corp. v. MacKenzie</i> , 636 F. Supp. 2d 927, 938 (D. Neb. 2009; <i>Mertz v. Pharmacists Mut. Ins. Co.</i> , 261 Neb. 704, 625 N.W.2d 197, 204-5 (Neb. 2001); <i>Presto-X-Co. v. Beller</i> , 253 Neb. 55, 64-65, 568 N.W.2d 235 (Neb. 1997). No caselaw regarding employee non-solicitation agreements.
WHAT STATE STATUTES GOVERN NON-COMPETES? IN NO STATUTE EXISTS, WHAT IS THE LEADING CASE?	No statutory authority. <i>Chambers-Dobson, Inc. v. Squier</i> , 238 Neb. 748, 472 N.W.2d 391 (1991).
HAS THE STATE ADOPTED THE UTSA?	Yes, Nebraska Revised Statute 87-502.
WHAT IS THE STATUTE OF LIMITATIONS?	USTA - 4 years after the misappropriation is discovered or should have been discovered by the exercise of reasonable diligence. Nebraska Revised Statute 87-506.
ANY EXCEPTIONS TO WHICH RESTRICTIVE COVENANTS ARE NOT ALLOWED?	No, so long as the reasonableness test is met.
IS CONTINUED EMPLOYMENT SUFFICIENT CONSIDERATION?	Yes. <i>Signature Style, Inc. v. Roseland</i> , No. 4:19-CV-3089, 2020 U.S. Dist. LEXIS 1098, at *12 (D. Neb. Jan. 6, 2020).
CAN BE ENFORCED AGAINST EMPLOYEES FIRED WITH OR WITHOUT CAUSE?	Yes, so long as there was no bad faith in initially seeking the restrictive covenant.
IS THE INEVITABLE DISCLOSURE DOCTRINE AVAILABLE?	No authority supporting that inevitable disclosure doctrine is available.
IS BLUE PENCILING OR REFORMATION ALLOWED?	No blue penciling or reformation is allowed. <i>H &amp; R Block Tax Servs. v. Circle A Enters.</i> , 269 Neb. 411, 415-416, 693 N.W.2d 548, 552-53 (2005).
WILL VIOLATIONS EXTEND THE RESTRICTED COVENANTS?	No authority supporting that the term of a restrictive covenant will be extended if violation occurs.
DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON REASONABLENESS OF TEMPORAL OR GEOGRAPHIC RESTRICTIONS?	N/A - no statutory authority.
DOES ANY STATUTE DEFINE PRESUMPTIVE PROTECTABLE LEGITIMATE BUSINESS INTERESTS?	N/A - no statutory authority.
ATTORNEYS' FEES TO THE PREVAILING PARTY?	No. Unless permitted by statute, any fee-shifting provision is contrary to public policy and void. <i>GFH Fin. Servs. Corp. v. Kirk</i> , 231 Neb. 557, 567, 437 N.W.2d 453, 459 (1989)

# Nevada

RESPONDENT	Jane N. Kespradit, Esq.   <a href="#">LimNexus LLP</a>
ARE NON-COMPETES ALLOWABLE OR OTHERWISE FAVORED?	Yes.
ARE EMPLOYEE AND/OR CUSTOMER NON-SOLICITATION AGREEMENTS ALLOWABLE?	Yes.
WHAT STATE STATUTES GOVERN NON-COMPETES? IN NO STATUTE EXISTS, WHAT IS THE LEADING CASE?	NRS §§ 613.195-613.200.
HAS THE STATE ADOPTED THE UTSA?	Yes, as modified. NRS §§ 600A.010-600A.100.
WHAT IS THE STATUTE OF LIMITATIONS?	3 years (misappropriation). 6 years (breach of written contract).
ANY EXCEPTIONS TO WHICH RESTRICTIVE COVENANTS ARE NOT ALLOWED?	Yes.
IS CONTINUED EMPLOYMENT SUFFICIENT CONSIDERATION?	Yes, if the worker is an at-will employee.
CAN BE ENFORCED AGAINST EMPLOYEES FIRED WITH OR WITHOUT CAUSE?	Yes.
IS THE INEVITABLE DISCLOSURE DOCTRINE AVAILABLE?	Possibly - not yet decided.
IS BLUE PENCILING OR REFORMATION ALLOWED?	Yes. NRS § 613.195(5).
WILL VIOLATIONS EXTEND THE RESTRICTED COVENANTS?	Yes.
DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON REASONABLENESS OF TEMPORAL OR GEOGRAPHIC RESTRICTIONS?	No.
DOES ANY STATUTE DEFINE PRESUMPTIVE PROTECTABLE LEGITIMATE BUSINESS INTERESTS?	No.

ATTORNEYS' FEES TO THE  
PREVAILING PARTY?

Non-competes: Attorneys' fees for certain violations.  
Misappropriation: Yes. NRS § 600A.060.

## New Hampshire

RESPONDENT

Sara Schwartz, Esq. | [Schwartz Hannum PC](#)

ARE NON-COMPETES  
ALLOWABLE OR OTHERWISE  
FAVORED?

Yes

ARE EMPLOYEE AND/OR  
CUSTOMER NON-SOLICITATION  
AGREEMENTS ALLOWABLE?

Yes

WHAT STATE STATUTES GOVERN  
NON-COMPETES? IN NO  
STATUTE EXISTS, WHAT IS THE  
LEADING CASE?

N.H. Rev. Stat. § 275:70, N.H. Rev. Stat. § 275:70-a

HAS THE STATE ADOPTED THE  
UTSA?

Yes

WHAT IS THE STATUTE OF  
LIMITATIONS?

Three years, though employers typically seek injunctive relief much sooner,  
during the life of the non-compete.

ANY EXCEPTIONS TO WHICH  
RESTRICTIVE COVENANTS ARE  
NOT ALLOWED?

Unenforceable as to employees who are paid at an hourly rate of no more than  
200 percent of the federal minimum wage. Additionally, a non-compete must  
be provided to a new employee prior to his or her acceptance of the job offer,  
or the non-compete is invalid.

IS CONTINUED EMPLOYMENT  
SUFFICIENT CONSIDERATION?

Yes, under existing case law. However, there may be some tension between  
this principle and the statutory requirement that a non-compete be given to a  
new employee before he or she accepts the job offer.

CAN BE ENFORCED AGAINST  
EMPLOYEES FIRED WITH OR  
WITHOUT CAUSE?

Yes

IS THE INEVITABLE DISCLOSURE  
DOCTRINE AVAILABLE?

The NH courts have not adopted this doctrine.

IS BLUE PENCILING OR  
REFORMATION ALLOWED?

Yes

WILL VIOLATIONS EXTEND THE  
RESTRICTED COVENANTS?

No

DOES ANY STATUTE DEFINE  
PRESUMPTIVE LIMITATIONS ON  
REASONABLENESS OF  
TEMPORAL OR GEOGRAPHIC  
RESTRICTIONS?

No

DOES ANY STATUTE DEFINE PRESUMPTIVE PROTECTABLE LEGITIMATE BUSINESS INTERESTS?

No

ATTORNEYS' FEES TO THE PREVAILING PARTY?

Yes, if there is a prevailing party provision in the agreement

## New Jersey

RESPONDENT

Michele Rannie, Esq. | [Rozario Touma P.C.](#)

ARE NON-COMPETES ALLOWABLE OR OTHERWISE FAVORED?

Yes, provided they are reasonable. NJ disfavors restraints on trade and therefore restrictive covenants are narrowly construed. NJ Courts apply a test known as the Solari/Whitmyer test to determine whether a restrictive covenant is reasonable. An Agreement is reasonable under that test if it: (1) protects legitimate interests of the party seeking to enforce the covenant; (2) does not impose an undue hardship on the party to be restricted; and (3) is not injurious to the public. See *Maw v. Advanced Clinical Commc'ns, Inc.* 179 N.J. 439, 447 (2004). Courts will not however, enforce a restrictive agreement merely to prevent competition. See *Ingersoll-Rand Co. v. Ciavatta*, 110 N.J. 609, 635 (1988). If a restrictive covenant is found to be enforceable, its scope can be limited concerning the duration of its restriction and the geographic area it covers.

ARE EMPLOYEE AND/OR CUSTOMER NON-SOLICITATION AGREEMENTS ALLOWABLE?

Yes. NJ recognizes a business tort of unfair competition defined as the misappropriation of one's property by another which has some sort of commercial or pecuniary value. See *ADP, LLC v. Kusins*, 460 N.J. Super. 368, 215 A.3d 924 (App. Div. 2019). N.J. Stat. §56:4-1 also provides "no merchant, firm or corporation shall appropriate for his or their own use a name, brand, trademark, reputation or goodwill of any maker in whose product such merchant, firm or corporation deals." The tort broadly focuses on fair play. Courts enforce non-solicitation clauses where there is shown to be a taking of confidential and proprietary property and then using it effectively to target employer's clients which is contrary to the notion of free competition that is fair. Courts have held that a company's information need not rise to the level of a trade secret to be protected from misappropriation, it may otherwise be publicly available. Ultimately, the key to determine the misuse of information is the relationship of the parties at the time of disclosure and the intended use of the information. Misappropriating a targeted solicitation list based on information from a former employer's client list is considered contrary to the notion of fair competition. See *Lamore Burns & Co. v. Walters*, 167 N.J. 285, 309, 770 A.2d 1158 (May 14, 2001).

WHAT STATE STATUTES GOVERN NON-COMPETES? IN NO STATUTE EXISTS, WHAT IS THE LEADING CASE?

Rule 5.6 of the NJ Rules of Professional Conduct governs non-compete agreements in the legal industry and Section 13:42-10.16 of the NJ Administrative Code governs non-compete agreements for psychologists licensed by the NJ Board of Psychological Examiners.

HAS THE STATE ADOPTED THE UTSA?	The New Jersey Trade Secrets Act (NJTSA), N.J.S.A. 56:15-1 , et seq was signed into law on January 9, 2012 and is modeled after the UTSA.
WHAT IS THE STATUTE OF LIMITATIONS?	6 years - (non compete) breach of written contract (N.J. Stat. §2A:14-1). Courts have applied the equitable doctrine of laches that reduces the statute of limitations where there has been an unreasonable delay in prosecuting a claim. See <i>Fox v. Millman</i> , 210 N.J. 401, 45 A.3d 332 (N.J. 2012). 6 years (misappropriation) - N.J. Stat. §2A:14-1
ANY EXCEPTIONS TO WHICH RESTRICTIVE COVENANTS ARE NOT ALLOWED?	In NJ the determination of the enforceability of a restrictive covenant requires a "fact-sensitive" analysis of the circumstances of each case. If a restrictive covenant is found to be overly broad it will be found to be void per se. The employer bears the burden of establishing the covenant's enforceability. The Court balances the employers' legitimate interests which include the protection of trade secrets or propriety information as well as customer relations. Courts have found that the knowledge, skill, expertise, and information acquired by an employee during his employment become part of the employee's person and a restrictive covenant would not then be enforced. The Court must determine the likelihood of the employee finding other work in his or her field, and the burden the restriction places on the employee. Therefore the geographical, temporal, and subject-matter restrictions of an otherwise enforceable [RCA] will be enforced only to the extent reasonably necessary to protect the employer's legitimate business interests. See <i>ADP, LLC v. Kusins</i> , 460 N.J. Super. 368, 215 A.3d 924 (App. Div. 2019).
IS CONTINUED EMPLOYMENT SUFFICIENT CONSIDERATION?	Yes, provided the continued employment is an "explicit, affirmative agreement that unmistakably" reflected the employee's assent. Courts have held that the existence of sufficient consideration to support a post-employment restraint may be found in either the original contract of employment or in a post-employment contract, where the supporting consideration is at least, in part, the continuation of employment. See <i>Hogan v. Bergen Brunswick Corp.</i> , 153 N.J. Super. 37, 378 A.2d 1164 (App. Div. 1977).
CAN BE ENFORCED AGAINST EMPLOYEES FIRED WITH OR WITHOUT CAUSE?	New Jersey Courts have held that an employer may enforce a non-compete if the employer terminated the relationship. See <i>Pierson v. Medical Health Centers, P.A.</i> 869 A.2d 901 (N.J. 2005). New Jersey Courts do not enforce a non-compete after termination if it conflicts with the agreement terms See <i>All Quality Care, Inc. v. Karim</i> , No. SSX-L-66-03, 2005 WL 3526089, at *3-*4 (N.J. Super. Ct. App. Div. Dec. 27, 2005). A
IS THE INEVITABLE DISCLOSURE DOCTRINE AVAILABLE?	Courts consider the NJTSA provision that "actual or threatened misappropriation may be enjoined" as representing a departure from the common-law "inevitable disclosure" doctrine.
IS BLUE PENCILING OR REFORMATION ALLOWED?	Yes. See <i>Solari Industries, Inc. v. Malady</i> , 55 N.J.571, 264 A/2d 53 (N.J. 1970).
WILL VIOLATIONS EXTEND THE RESTRICTED COVENANTS?	No authority supporting that the term of a restrictive covenant will be extended if violation occurs.
DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON	No.

REASONABLENESS OF  
TEMPORAL OF GEOGRAPHIC  
RESTRICTIONS?

DOES ANY STATUTE DEFINE  
PRESUMPTIVE PROTECTABLE  
LEGITIMATE BUSINESS  
INTERESTS?

No.

ATTORNEYS' FEES TO THE  
PREVAILING PARTY?

Attorney's fees will not be awarded where plaintiff had a reasonable and good faith belief in the merit of the cause. The reasonableness of a belief in the merit of a cause of action may dwindle over time. Reasonable attorney's fees may be awarded only from the point in the litigation at which it becomes clear the action is frivolous. *E. Nursing Servs. I, Inc. v. Amedisys, Inc.*, Docket No. PAS-L-4306-14 (N.J. Super. Jul. 12, 2017)

## New Mexico

RESPONDENT

Faith Reyes, Esq. | [Verdi & Ogletree PLLC](#)

ARE NON-COMPETES  
ALLOWABLE OR OTHERWISE  
FAVORED?

Allowed with exceptions for certain health care providers (regarding health care practitioner agreements, see NMSA 1978, 24-11-1 to 5 (2015)).

ARE EMPLOYEE AND/OR  
CUSTOMER NON-SOLICITATION  
AGREEMENTS ALLOWABLE?

Undecided.

WHAT STATE STATUTES GOVERN  
NON-COMPETES? IN NO  
STATUTE EXISTS, WHAT IS THE  
LEADING CASE?

Restraints of trade generally: NMSA 1978, 57-1-1 to 19 (1987); Health Care Practitioners, NMSA 1978, 24-11-1 to 5 (2015); most published decision is *Kidscare, P.C. v. Mann*, 2015-NMCA-064.

HAS THE STATE ADOPTED THE  
UTSA?

Yes; NMSA 1978, 57-3A-1 to 7

WHAT IS THE STATUTE OF  
LIMITATIONS?

UTSA = 3 years after misappropriation is discovered (see 57-3A-7); 4 years under restraints of trade (57-1-12); 6 year statute of limitations on a written contract (37-1-3)

ANY EXCEPTIONS TO WHICH  
RESTRICTIVE COVENANTS ARE  
NOT ALLOWED?

Yes, Health Care Practitioners, NMSA 1978, 24-11-1 to 5 (2015)

IS CONTINUED EMPLOYMENT  
SUFFICIENT CONSIDERATION?

Continued at-will employment may not be sufficient because the promise may be illusory. See *Piano v Premier Distrib. Co.*, 2005-NMCA-18, ¶ 8 (holding with regard to an arbitration agreement, the promise of continued employment was illusory and not consideration for the agreement because the employer retained the ability to discharge the employee at its discretion).

CAN BE ENFORCED AGAINST  
EMPLOYEES FIRED WITH OR  
WITHOUT CAUSE?

Undecided but the answer is likely "yes."



IS THE INEVITABLE DISCLOSURE DOCTRINE AVAILABLE?

Undecided.

IS BLUE PENCILING OR REFORMATION ALLOWED?

Yes, if the contract contains language permitting reformation.

WILL VIOLATIONS EXTEND THE RESTRICTED COVENANTS?

Undecided.

DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON REASONABLENESS OF TEMPORAL OR GEOGRAPHIC RESTRICTIONS?

No.

DOES ANY STATUTE DEFINE PRESUMPTIVE PROTECTABLE LEGITIMATE BUSINESS INTERESTS?

No.

ATTORNEYS' FEES TO THE PREVAILING PARTY?

Undecided but yes if the contract contains a fee provision.

## New York

RESPONDENT

Michele Rannie, Esq. | [Rozario Touma P.C.](#)

ARE NON-COMPETES ALLOWABLE OR OTHERWISE FAVORED?

The Court of Appeals of New York has held that non-compete clauses are enforceable only to the extent that they satisfy the overriding requirement of reasonableness. See *Reed, Roberts Assoc. Inc. v. Strauman*, 40 N.Y.2d 303, 386 N.Y.S.2d 677 (1976). There is a stricter standard of reasonableness for noncompete clauses. The clause must be (1) reasonable in time and area, (2) necessary to protect the employer's legitimate interests, (3) not harmful to the general public and, (4) not unreasonably burdensome to the employee. Judicial disfavor of these covenants is provoked by powerful considerations of public policy which militate against sanctioning the loss of a man's livelihood. *Reed*, at 307.

ARE EMPLOYEE AND/OR CUSTOMER NON-SOLICITATION AGREEMENTS ALLOWABLE?

The Court of Appeals of New York has held that non-solicitation clauses will be enforced if reasonably limited temporally and geographically, and then only to the extent necessary to protect the employer from unfair competition which stems from the employee's use or disclosure of trade secrets or confidential customers lists. See *Columbia Ribbon v. A-1-A Corp.*, 42 N.Y.2d 496, 398 N.Y.S.2d 1004 (1977). Courts have held that where customer lists contain information relating to clients that is not readily known in the trade and that is discoverable only through effort, the employer has a substantial interest in retaining its present clients and the non-solicitation clause may then be enforced. *Stanley Tulchin Assoc., Inc. v. Vignola*, 186 A.D.2d 183, 587 N.Y.S.2d 761 (2nd Dept. 1992).

WHAT STATE STATUTES GOVERN NON-COMPETES? IN NO

There is no state statute.

STATUTE EXISTS, WHAT IS THE LEADING CASE?

HAS THE STATE ADOPTED THE UTSA?

No.

WHAT IS THE STATUTE OF LIMITATIONS?

Breach of employment contract claims must be brought within 6 years and begins to run when the contract is breached. Civil Practice Law Rules 213(2)

ANY EXCEPTIONS TO WHICH RESTRICTIVE COVENANTS ARE NOT ALLOWED?

The exception is the rule in New York. In *Reed, Roberts Assoc. v. Strauman*, 40 N.Y.2d 303, 386 N.Y.S.2d 677 (1976), the Court of Appeals adopted the Restatement of Agency standard, and held that a restrictive covenant would only be specifically enforced in such context if it were "reasonable in time and area, necessary to protect the employer's legitimate interests, not harmful to the general public and not unreasonably burdensome to the employee." Two (2) part test for determining whether a restrictive covenant serves the employer's legitimate interest within the context of the Restatement of Agency standard. Under the legitimate interest inquiry, the Reed court held that restrictive covenants will be enforceable only (1) "to the extent necessary to prevent the disclosure or use of trade secrets or confidential information" or (2) where an employee's services are unique or extraordinary."

IS CONTINUED EMPLOYMENT SUFFICIENT CONSIDERATION?

Continued employment constitutes sufficient consideration for a noncompete where discharge was the alternative, or where the employee remained with the employer for a substantial time after the covenant was signed.

CAN BE ENFORCED AGAINST EMPLOYEES FIRED WITH OR WITHOUT CAUSE?

The Appellate Division, Second Department has held that a restrictive covenant not to compete is unenforceable where "the employer... does not demonstrate continued willingness to employ the party covenanting not to compete." See *Buchanan Capital Mkts, LLC v. DeLucca*, 144 A.D.3d 508, 508 (1st Dept. 2016) (holding that "where the employer terminates the employment relationship without cause...his action necessarily destroys the mutuality of obligation on which the covenant rests as well as the employer's ability to impose a forfeiture. An employer should not be permitted to use offensively an anticompetition clause coupled with a forfeiture provision to economically cripple a former employee and simultaneously deny other potential employers of his services" Id. at 89.

IS THE INEVITABLE DISCLOSURE DOCTRINE AVAILABLE?

The inevitable disclosure doctrine, which is usually applied to imply a restrictive covenant based on evidence that the employee misappropriated a valuable trade secret is "disfavored" under New York law. Courts have however applied the doctrine to support the enforcement of an express covenant not to compete.

IS BLUE PENCILING OR REFORMATION ALLOWED?

Since it is well settled that restrictive covenants that are too broad on their face may be pared down by the court, there is no reason why the former employer cannot preempt any such paring by seeking less enforcement than permitted under the contract. See *Ashland Mgmt. Inc. v. Altair Investments NA, LLC*, 59 A.D.3d 97, 106, 869 N.Y.S.2d 465 (1st Dept. 2008) (noting that so-called blue penciling of restrictive covenants is permitted).

WILL VIOLATIONS EXTEND THE RESTRICTED COVENANTS?

No.

DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON REASONABLENESS OF TEMPORAL OF GEOGRAPHIC RESTRICTIONS?

No.

DOES ANY STATUTE DEFINE PRESUMPTIVE PROTECTABLE LEGITIMATE BUSINESS INTERESTS?

No

ATTORNEYS' FEES TO THE PREVAILING PARTY?

## North Carolina

RESPONDENT

Ola Nunez, Esq. | [Nukk-Freeman & Cerra, P.C.](#)

ARE NON-COMPETES ALLOWABLE OR OTHERWISE FAVORED?

Although courts generally view them as disfavorable restraints on trade, N.C. Gen. Stat. § 75-4 permits non-compete clauses if in writing and signed, among other things.

ARE EMPLOYEE AND/OR CUSTOMER NON-SOLICITATION AGREEMENTS ALLOWABLE?

Yes.

WHAT STATE STATUTES GOVERN NON-COMPETES? IN NO STATUTE EXISTS, WHAT IS THE LEADING CASE?

N.C. Gen. Stat. § 75-4

HAS THE STATE ADOPTED THE UTSA?

No, North Carolina has not adopted the UTSA. The state has adopted its own statute, which is similar to the UTSA, the North Carolina Trade Secret Protection Act ("NCTSPA"). See N.C. Gen. Stat. § 66-152 - 66-162.

WHAT IS THE STATUTE OF LIMITATIONS?

The statute of limitations on contract actions in North Carolina is three years.

ANY EXCEPTIONS TO WHICH RESTRICTIVE COVENANTS ARE NOT ALLOWED?

Restrictive covenants are only allowed if in writing, signed by the parties, reasonable as to time and territory, based on valuable consideration and reasonably necessary for protection of a legitimate business interest.

IS CONTINUED EMPLOYMENT SUFFICIENT CONSIDERATION?

The promise of new employment is considered valuable consideration for a restrictive covenant. However, restrictive covenants entered during employment require new consideration.

CAN BE ENFORCED AGAINST EMPLOYEES FIRED WITH OR WITHOUT CAUSE?

Yes.

IS THE INEVITABLE DISCLOSURE DOCTRINE AVAILABLE?

No, the doctrine has not yet been firmly adopted.

IS BLUE PENCILING OR REFORMATION ALLOWED?

Yes.

WILL VIOLATIONS EXTEND THE RESTRICTED COVENANTS?

No.

DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON REASONABLENESS OF TEMPORAL OR GEOGRAPHIC RESTRICTIONS?

No.

DOES ANY STATUTE DEFINE PRESUMPTIVE PROTECTABLE LEGITIMATE BUSINESS INTERESTS?

No - case law demonstrates that identifying a legitimate business interest depends on the facts and circumstances.

ATTORNEYS' FEES TO THE PREVAILING PARTY?

Yes.

## North Dakota

RESPONDENT

Jane N. Kespradit, Esq. | [LimNexus LLP](#)

ARE NON-COMPETES ALLOWABLE OR OTHERWISE FAVORED?

No, with exceptions for sale or dissolution of a business and between business owners.

ARE EMPLOYEE AND/OR CUSTOMER NON-SOLICITATION AGREEMENTS ALLOWABLE?

Yes, as to employee non-solicitation.  
No, as to customer non-solicitation.

WHAT STATE STATUTES GOVERN NON-COMPETES? IN NO STATUTE EXISTS, WHAT IS THE LEADING CASE?

N.D.C.C. § 9-08-06.

HAS THE STATE ADOPTED THE UTSA?

Yes, as modified. N.D.C.C. § 47-25.1-01.

WHAT IS THE STATUTE OF LIMITATIONS?

3 years (misappropriation).  
6 years (breach of written contract).

ANY EXCEPTIONS TO WHICH RESTRICTIVE COVENANTS ARE NOT ALLOWED?

Yes.

IS CONTINUED EMPLOYMENT SUFFICIENT CONSIDERATION?

No, as to non-competes.  
Yes, as to non-disclosure agreements.

CAN BE ENFORCED AGAINST  
EMPLOYEES FIRED WITH OR  
WITHOUT CAUSE?

Not applicable - void in employment context.

IS THE INEVITABLE DISCLOSURE  
DOCTRINE AVAILABLE?

Possibly - not yet decided.

IS BLUE PENCILING OR  
REFORMATION ALLOWED?

Not applicable - void in employment context.

WILL VIOLATIONS EXTEND THE  
RESTRICTED COVENANTS?

Not applicable - void in employment context.

DOES ANY STATUTE DEFINE  
PRESUMPTIVE LIMITATIONS ON  
REASONABLENESS OF  
TEMPORAL OR GEOGRAPHIC  
RESTRICTIONS?

No.

DOES ANY STATUTE DEFINE  
PRESUMPTIVE PROTECTABLE  
LEGITIMATE BUSINESS  
INTERESTS?

No.

ATTORNEYS' FEES TO THE  
PREVAILING PARTY?

Misappropriation: Yes, under limited circumstances. N.D.C.C. § 47-25.1-04.

# Ohio

## RESPONDENT

Deborah Brouwer, Esq. | [Nemeth Bonnette Brouwer PC](#)

ARE NON-COMPETES ALLOWABLE OR OTHERWISE FAVORED?

Yes. Ohio recognizes non-compete agreements as valid and enforceable for employers to protect their legitimate business interests if the agreement is reasonable.

ARE EMPLOYEE AND/OR CUSTOMER NON-SOLICITATION AGREEMENTS ALLOWABLE?

Ohio courts enforce non-solicitation agreements if the agreement is reasonable or necessary to protect an employer's legitimate business interest. *Century Bus. Servs., Inc., v. Urban*, 179 Ohio App.3d 111, 117 (8th Dist 2008).

WHAT STATE STATUTES GOVERN NON-COMPETES? IN NO STATUTE EXISTS, WHAT IS THE LEADING CASE?

No statute directly governs non-compete agreements in general. However, Ohio's Valentine Act [Ohio Rev. Code § 1331.02] governs contracts and combinations that restrain trade. Typically, when Ohio courts are presented with non-competition agreements in employment cases there is no reference to this statute. For attorneys, Ohio Rules of Professional Conduct 1.17 and 5.6 govern non-compete agreements in the legal industry.

HAS THE STATE ADOPTED THE UTSA?

Ohio Uniform Trade Secret Act, RC § 1333.61. Ohio uses a six-factor test to determine whether information constitutes a trade secret: (1) extent to which the information is known outside the business; (2) extent to which it is known to those inside the business; (3) the precautions taken by the holder of the trade secret to guard the secrecy of the information; (4) savings effected and the value to the holder in having the information as against competitors; (5) amount of effort or money expended in obtaining and developing the information; and (6) the amount of time and expense it would take for others to acquire and duplicate the information. *Novus Grp., LLC v. Prudential Fin. Inc.*, 2022 WL 3027273 (S.D. Oh. Aug. 1, 2022)(citing State ex. rel. *The Plain Dealer v. Oh. Dept. of Ins.*, 80 Ohio St.3d 523, 524-25 (1997)).

WHAT IS THE STATUTE OF LIMITATIONS?

Ohio Revised Code § 2305.06 requires assertion of breach of contract claims for written contracts within 6 years after the cause of action accrues. Claims accrued before June 14, 2021, must be brought by the earlier of June 14, 2027, or the remaining period under the prior (8-year) limitation.

ANY EXCEPTIONS TO WHICH RESTRICTIVE COVENANTS ARE NOT ALLOWED?

An attorney cannot offer ownership or employment agreement that restricts another lawyer's right to practice after terminating the relationship except for an agreement about retirement benefits, or an agreement restricting a lawyer's right to practice as part of a settlement between private parties. Ohio Rules of Prof. Cond., Rule 5.6.

IS CONTINUED EMPLOYMENT SUFFICIENT CONSIDERATION?

Continued at-will employment is sufficient consideration to support an employee's agreement not to compete with his or her employer, even if that agreement is made long after the start of employment. *Lake Land Emp't Group of Akron, L.L.C. v. Columbus*, 101 Ohio St.3d 242, 246 (2004).

CAN BE ENFORCED AGAINST EMPLOYEES FIRED WITH OR WITHOUT CAUSE?

Yes. Ohio courts have enforced non-compete agreements after an employee has been discharged. *Homan, Inc., v. A1AG Servs., L.L.C.*, 175 Ohio App.3d 51 (3rd Dist. 2008). In Ohio a termination could be evidence against a finding that the employee's departure was a disruption to the employer's legitimate

	business interest. <i>Brentlinger Enterps. v. Curran</i> , 141 Ohio App.3d 640 (10th Dist. 2001).
IS THE INEVITABLE DISCLOSURE DOCTRINE AVAILABLE?	Yes. In <i>Proctor &amp; Gamble Co. v. Stoneham</i> , the First District ruled that "a threat of harm warranting injunctive relief can be shown by facts establishing that an employee with detailed and comprehensive knowledge of an employer's trade secrets and confidential information has begun employment with a competitor of the former employer in a position that is substantially similar to the position held during the former employment." 140 Ohio App.3d 260, 274 (10th Dist 2000).
IS BLUE PENCILING OR REFORMATION ALLOWED?	Yes. Ohio courts may modify a non-compete agreement that is found to be unreasonable to protect an employer's legitimate business interest or match the parties' intent at the time of contracting. <i>Raimonde v. Van Vlerah</i> , 325 N.E.2d 544, 547 (Ohio 1975). In determining the reasonableness for modification purposes, Ohio courts consider, scope of time, if the former employee is the customer's only contact with the employer, the employee's knowledge of confidential information or trade secrets, whether the agreement aims at eliminating normal or unfair competition, whether the employer's benefits are proportionate to their detriment.
WILL VIOLATIONS EXTEND THE RESTRICTED COVENANTS?	Under Ohio law, a covenant not to compete may not expire while its validity is being litigated. <i>Homan, inc. v. A1 AG Servs, LLC</i> , 775 Ohio App.3d 51 (3rd Dist. 2008). Accordingly, courts may grant injunctive relief for a reasonable period from the date of the order finding a violation. See e.g. <i>Rogers v. Runfola &amp; Assoc.</i> , 57 Ohio St.2d 5, 9 (1991) (providing injunctive relief for 1 year and rejecting former employee's argument that the restrictive period had expired by its own terms).
DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON REASONABLENESS OF TEMPORAL OF GEOGRAPHIC RESTRICTIONS?	No. Ohio determines a reasonable duration of a non-compete agreement based on the facts of the dispute. Ohio has enforced non-compete agreements for as long as three years and rejected agreements with shorter durations. Ohio courts also interpret geographic restrictions "within" a definite distance as a straight-line distance rather than driving distance. <i>Ginn v. Stonecreek Dental Care</i> , 2015-Ohio-4452, at ¶ 29 (12th Dist). Ohio regards geographic restrictions reasonable even if not fixed, contingent on other factors such as salesmen being prohibited from working for a competitor in his former territory. <i>Federal Sanitation Co. v. Frankel</i> , 171 N.E. 339, 340 (8th Dist. 1929).
DOES ANY STATUTE DEFINE PRESUMPTIVE PROTECTABLE LEGITIMATE BUSINESS INTERESTS?	No. Ohio statute defines protectable interest, but caselaw has outlined what Ohio courts view as a legitimate protectable interest. "Generally, the only business interests which have been deemed sufficient to justify enforcement of a noncompete clause against a former employee [under Ohio law] are preventing the disclosure of the former employer's trade secrets or the use of the former employer's proprietary customer information to solicit the former employer's customers." <i>Brentlinger Enterps v. Curran</i> , 141 Ohio App.3d 640, 649 (10th Dist 2001). An employer also "has a legitimate interest in preventing its employees from exploiting the customer relationships developed at its expense and in its name." <i>National Interstate Co. v. Perro</i> , 934 F.Supp.883,890 (N.D. Ohio 1996).

ATTORNEYS' FEES TO THE  
PREVAILING PARTY?

An employer may recover its attorneys' fees from the employee if the act of the employee constitute bad faith. *Columbus Med. Equip. Co. v. Watters*, 13 Ohio App.3d 149, 153 (10th Dist. 1983)(while still employed but after interviewing with new employer, employee entered private office, removed agreement from file, and tore it up).

## Oklahoma

RESPONDENT

Mary Snyder, Esq. | [Wilson Turner Kosmo LLP](#)

ARE NON-COMPETES  
ALLOWABLE OR OTHERWISE  
FAVORED?

Non-competes are disfavored and generally void.

ARE EMPLOYEE AND/OR  
CUSTOMER NON-SOLICITATION  
AGREEMENTS ALLOWABLE?

Yes. Contracts prohibiting employee/independent contractor solicitation are allowed. Contracts can also prohibit direct solicitation of the established customers of the former employer.

WHAT STATE STATUTES GOVERN  
NON-COMPETES? IN NO  
STATUTE EXISTS, WHAT IS THE  
LEADING CASE?

15 Okla. Stat. 217-219B

HAS THE STATE ADOPTED THE  
UTSA?

Yes. It is codified at 78 Okla. Stat. 85-94.

WHAT IS THE STATUTE OF  
LIMITATIONS?

Misappropriation of trade secrets is governed by a 3-year statute of limitations, which begins to run when the misappropriation is discovered or should have been discovered with the exercise of reasonable due diligence. 78 Okla. Stat. 91. Other claims would be governed by the generally applicable statute of limitations depending on the cause of action pled -- if based on a written non-solicitation agreement, the statute of limitations would be 5 years. 12 Okla Stat. 95. If the cause of action were to be based on injury to the rights of another, not arising from a contract, the statute of limitations would be 2 years.

ANY EXCEPTIONS TO WHICH  
RESTRICTIVE COVENANTS ARE  
NOT ALLOWED?

Yes. While a contract that restrains a person from exercising a lawful profession, trade or business is generally void, there are some exceptions, found in 15 Okla. Stat. 218-219B. These exceptions are: (1) when a covenant not to compete is entered into as part of the sale of goodwill of a business so long as the covenant is limited geographically as specified in 15 Okla. Stat. 218; (2) when a covenant not to compete is entered into as part of the dissolution of a partnership and is geographically limited as specified in 15 Okla. Stat. 219. In addition, contracts that prohibit the solicitation of established customers, employees, and independent contractors are valid.

IS CONTINUED EMPLOYMENT  
SUFFICIENT CONSIDERATION?

A federal district court has held that continued employment is adequate consideration for a nondisclosure/non solicitation agreement. *MCC Mgmt. of Naples, Inc. v. Int'l Bancshares Corp.*, 2010 WL 11519869, at \*7 (W.D. Okla. Jan. 28, 2010). However, the Court cited a Tenth Circuit case that had relied on New



Mexico law for this proposition. In addition, Oklahoma law presumes consideration where there is a written instrument. 15 Okla. Stat. 115.

CAN BE ENFORCED AGAINST EMPLOYEES FIRED WITH OR WITHOUT CAUSE?

Courts have looked to the language of the employee agreement to determine whether non-solicitation/non-disclosure agreements remain in effect after termination, and whether the reason for the termination matters. This has not been addressed by statute or by court cases in Oklahoma outside the context of these written agreements.

IS THE INEVITABLE DISCLOSURE DOCTRINE AVAILABLE?

This issue has not been decided by Oklahoma courts or the Tenth Circuit. The Federal District Court for the Northern District of Oklahoma declined to adopt the "inevitable disclosure doctrine" when it was presented by a plaintiff. The Court based its ruling on Oklahoma's public policy generally allowing former employees to compete with their former employers. See, *AFGD, Inc. v. Tri-Star Glass, Inc.*, 2005 WL 8175945, at \*4 (N.D. Okla. June 7, 2005)

IS BLUE PENCILING OR REFORMATION ALLOWED?

Yes, unless essential elements of the covenant are missing such that the court would be required to fill in missing essential terms. Court decisions are mixed as to whether a court will modify an otherwise void non-compete agreement to preclude only solicitation, as allowed by law. Compare, *Express Servs., Inc. v. Averette*, 2007 WL 1888652, at \*4-5 (W.D. Okla. June 29, 2007) (modifying agreement) to *Loewen Grp. Acquisition Corp. v. Matthews*, 12 P.2d 977 (Okla Ct. App. 2000) (refusing to modify otherwise void agreement).

WILL VIOLATIONS EXTEND THE RESTRICTED COVENANTS?

Yes, at least where the agreement provides for this. See *Southwest Stainless, LP v. Sappington*, 2008 WL 3013548 (N.D. Okla. Aug. 1, 2008) (issuing injunction that ran for 1 year past the date of the court's judgment rather from the date the employee separated from employment where the agreement provided for tolling of the temporal term of the agreement during any period of violation), but note that case predates current Oklahoma statutory law making non-competes generally void.

DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON REASONABLENESS OF TEMPORAL OR GEOGRAPHIC RESTRICTIONS?

Yes, where covenants not to compete are valid (i.e., in regard to the sale of goodwill of a business or dissolution of a partnership), 15 Okla. Stat. 218 and 219 limit the geographic scope to "a specified county and any county or counties contiguous thereto, or a specified city or town or any part thereof."

DOES ANY STATUTE DEFINE PRESUMPTIVE PROTECTABLE LEGITIMATE BUSINESS INTERESTS?

Yes, in the sense that 15 Okla. Stat. 219A and 219B allow covenants not to solicit established customers, employees, or independent contractors. Case law has also indicated that employers can put restraints on employees' ability to use contacts, good will and opportunities gained directly from the employer to compete without violating Oklahoma's law invalidating non-competes.

ATTORNEYS' FEES TO THE PREVAILING PARTY?

Yes, for misappropriation of trade secrets but only based on a showing of misappropriation made in bad faith or willful and malicious misappropriation. 78 Okla. Stat. 89.

## Oregon

RESPONDENT

Aviva Kamm, Esq. | (formerly with NAMWOLF firm) [Stokes Lawrence, P.S.](#)

ARE NON-COMPETES ALLOWABLE OR OTHERWISE FAVORED?	Allowable, but restricted by ORS 653.295.
ARE EMPLOYEE AND/OR CUSTOMER NON-SOLICITATION AGREEMENTS ALLOWABLE?	Yes. Non-solicitation agreements are excluded from coverage under ORS 653.295.
WHAT STATE STATUTES GOVERN NON-COMPETES? IN NO STATUTE EXISTS, WHAT IS THE LEADING CASE?	ORS 653.295
HAS THE STATE ADOPTED THE UTSA?	Yes, ORS 646.461 to .475
WHAT IS THE STATUTE OF LIMITATIONS?	General contract statute of limitations is six years. ORS 12.080
ANY EXCEPTIONS TO WHICH RESTRICTIVE COVENANTS ARE NOT ALLOWED?	Yes, see ORS 653.295 - Non-competition agreements are unenforceable unless: (1) The employer informs the employee in a written employment offer at least two weeks before the first day of employment or the agreement is entered into upon a subsequent bona fide advancement of employee by employer; (2) the employee falls into either the executive, administrative, or professional exemption; (3) the employer has a protectable interest, which occurs when the employee has access to trade secrets, competitively sensitive confidential business or professional information, or other select instances; AND (4) at termination, the employee's annual salary and commissions exceed the median family income for a family of four. ORS 653.295. The term of a noncompetition agreement may not exceed 18 months from the date of the employee's termination. ORS 653.295.
IS CONTINUED EMPLOYMENT SUFFICIENT CONSIDERATION?	No.
CAN BE ENFORCED AGAINST EMPLOYEES FIRED WITH OR WITHOUT CAUSE?	Undecided.
IS THE INEVITABLE DISCLOSURE DOCTRINE AVAILABLE?	Undecided. <i>Kinship Partners, Inc. v. Embark Veterinary, Inc.</i> , 2022 WL 72123 at *7 (D.OR Jan. 3, 2022).
IS BLUE PENCILING OR REFORMATION ALLOWED?	Reformation permitted.
WILL VIOLATIONS EXTEND THE RESTRICTED COVENANTS?	
DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON REASONABLENESS OF TEMPORAL OR GEOGRAPHIC RESTRICTIONS?	Yes, the term of a noncompetition agreement may not exceed 12 months from the date of the employee's termination. ORS 653.295(3)

DOES ANY STATUTE DEFINE PRESUMPTIVE PROTECTABLE LEGITIMATE BUSINESS INTERESTS?

An employer has a protectable interest when the employee (a) has access to trade secrets, as defined by ORC 646.461; (b) has access to competitively sensitive confidential business or professional information that otherwise would not qualify as a trade secret, including product development plans, product launch plans, marketing strategy or sales plans; or (c) is employed as an on-air talent by an employer in the business of broadcasting and the employer: (A) In the year preceding the termination of the employee's employment, expended resources equal to or exceeding 10 percent of the employee's annual salary to develop, improve, train or publicly promote the employee, provided that the resources expended by the employer were expended on media that the employer does not own or control; and (B) Provides the employee, for the time the employee is restricted from working, the greater of compensation equal to at least: (i) Fifty percent of the employee's annual gross base salary and commissions at the time of the employee's termination; or (ii) Fifty percent of \$100,533, adjusted annually for inflation pursuant to the Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the Bureau of Labor Statistics of the United States Department of Labor immediately preceding the calendar year of the employee's termination. ORS 653.295(2).

ATTORNEYS' FEES TO THE PREVAILING PARTY?

Prevailing party fees dependent on the language of the agreement. ORS 653.295 does not address attorneys' fees.

## Pennsylvania

RESPONDENT

Kerrie Heslin, Esq. | [Nukk-Freeman & Cerra, PC](#)

ARE NON-COMPETES ALLOWABLE OR OTHERWISE FAVORED?

Yes, non-competes are permitted so long as they are ancillary to an employment relationship, are supported by adequate consideration, are reasonably limited in both duration and territory and the restrictions are designed to protect the legitimate interests of the employer. *Hess v. Gebhard & Co., Inc.*, 570 Pa. 148 (2002); *Piercing Pagoda, Inc. v. Hoffner*, 465 Pa. 500 (1976).

ARE EMPLOYEE AND/OR CUSTOMER NON-SOLICITATION AGREEMENTS ALLOWABLE?

Yes, non-solicitation agreements are permitted as to both employees and customers. Like non-competes, these restrictions must be ancillary to an employment relationship, supported by adequate consideration, reasonably limited in both duration and territory and the restrictions are designed to protect the legitimate interests of the employer. *BellFuel Corp. v. Cattolico*, 375 Pa. Super. 238 (1988).

WHAT STATE STATUTES GOVERN NON-COMPETES? IN NO STATUTE EXISTS, WHAT IS THE LEADING CASE?

No statute governs non-competes. The leading case is *Piercing Pagoda, Inc. v. Hoffner*, 465 Pa. 500 (1976).

HAS THE STATE ADOPTED THE UTSA?

Yes, Pennsylvania has adopted the Uniform Trade Secrets Act. 12 Pa. C.S. 5301, et. seq.

WHAT IS THE STATUTE OF LIMITATIONS?

The statute of limitations for a claim for misappropriation in violation of the UTSA is three (3) years from the date the misappropriation is discovered or should have been discovered through reasonable diligence. 12 Pa. C.S. 5307. Claims for breach of a non-compete or non-solicitation agreement have a four (4) year statute of limitations. 42 Pa. C.S. 5525.

ANY EXCEPTIONS TO WHICH RESTRICTIVE COVENANTS ARE NOT ALLOWED?

No-poach agreements between employers are not permitted as an unreasonable restraint on trade. *Pittsburgh Logistic Systems, Inc. v. Beemac Trucking, LLC*, 249A.3d 918 (Pa. 2021).

IS CONTINUED EMPLOYMENT SUFFICIENT CONSIDERATION?

No, continued employment is not sufficient consideration. New employment or additional consideration is required. *Socko v. Mid-Atlantic Sys. Of CPA, Inc.*, 126 A.3d 1266 (Pa. 2015).

CAN BE ENFORCED AGAINST EMPLOYEES FIRED WITH OR WITHOUT CAUSE?

"It is clear that a restrictive covenant can be enforced even if an employee is terminated by an employer, and the fact that an employee was fired without reason, standing alone, will not prevent a non-compete from being upheld." *Shepherd v. Pittsburgh Glassworks, LLC*, 25 A.3d 1233 (Pa. Super 2011) (citing *Missett v. Hub Intern. Pennsylvania, LLC*, 6 A.3d 530 (Pa. Super.2010)).

IS THE INEVITABLE DISCLOSURE DOCTRINE AVAILABLE?

Yes, Pennsylvania Courts will use the inevitable disclosure doctrine to enjoin the threatened misappropriation of trade secrets. *Freedom Medical Inc. v. Whitma*, 343 F.Supp.3d 509, 521 (E.D. Pa. 2018).

IS BLUE PENCILING OR REFORMATION ALLOWED?

Yes, it is within the broad discretion of the Court to modify the restrictions imposed upon the employee to include only those reasonably necessary to protect the employer. *All-Pack, Inc. v. Johnston*, 694 A.2d 347, 350-51 (Pa. Super. 1997)

WILL VIOLATIONS EXTEND THE RESTRICTED COVENANTS?

Yes, extension provisions contained within the agreement will be enforced by Pennsylvania Courts. *Judge Technical Services, Inc. v. Clancy*, 813 A.2d 879 (Pa. Super. 2002).

DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON REASONABLENESS OF TEMPORAL OR GEOGRAPHIC RESTRICTIONS?

No statute applies.

DOES ANY STATUTE DEFINE PRESUMPTIVE PROTECTABLE LEGITIMATE BUSINESS INTERESTS?

No statute specifically defines presumptive protectable business interests, other than the Uniform Trade Secrets Act. 12 Pa. C.S. 5301, et. seq.

ATTORNEYS' FEES TO THE PREVAILING PARTY?

Yes, if the agreement provides for an award of attorney's fees to the prevailing party, it will be enforced. See, e.g. *Cardiac Consultants, P.C. v. Feinberg*, 2004 WL 3401756 (Pa.Com.Pl. Oct. 22, 2004).

## Rhode Island

RESPONDENT

Sara Perez, Esq. | [Perez Morris](#)

ARE NON-COMPETES ALLOWABLE OR OTHERWISE FAVORED?	Yes, non-competes are allowable.
ARE EMPLOYEE AND/OR CUSTOMER NON-SOLICITATION AGREEMENTS ALLOWABLE?	Yes, both employee and customer non-solicitation agreements are allowable.
WHAT STATE STATUTES GOVERN NON-COMPETES? IN NO STATUTE EXISTS, WHAT IS THE LEADING CASE?	Non-competes are generally governed by 28 R.I. Gen. Laws Ann. § 28-59. Non-competes in relation to physicians specifically are governed by 5 R.I. Gen. Laws Ann. § 5-37-33.
HAS THE STATE ADOPTED THE UTSA?	Yes. 6 R.I. Gen. Laws Ann. § 6-41.
WHAT IS THE STATUTE OF LIMITATIONS?	The statute of limitations under the Uniform Trade Secrets Act is 3 years. 6. R.I. Gen. Laws Ann. § 6-41-6.
ANY EXCEPTIONS TO WHICH RESTRICTIVE COVENANTS ARE NOT ALLOWED?	Non-competes are not enforceable against physicians. 5 R.I. Gen. Laws Ann. § 5-37-33. Non-competes are not enforceable against nonexempt employees, undergraduate or graduate students engaging in short-term employment relationships, employees under the age of 18, and low-wage employees. 28 R.I. Gen. Laws Ann. § 28-59-3.
IS CONTINUED EMPLOYMENT SUFFICIENT CONSIDERATION?	Yes, Rhode Island courts have held that continued employment is adequate consideration to support a non-compete agreement. <i>R.J. Carbone Co. v. Regan</i> , 582 F.Supp. 2d 220 (D.R.I. 2008); <i>Aim High Acad., Inc. v. Jessen</i> , 2008 WL 5325586 (R.I. Super. Ct. Dec. 10, 2008).
CAN BE ENFORCED AGAINST EMPLOYEES FIRED WITH OR WITHOUT CAUSE?	The Rhode Island Noncompetition Agreement Act contains no guidance on this topic.
IS THE INEVITABLE DISCLOSURE DOCTRINE AVAILABLE?	No, the inevitable disclosure doctrine is not available.
IS BLUE PENCILING OR REFORMATION ALLOWED?	Reformation and blue penciling are allowed. <i>Dial Media, Inc. v. Schiff</i> , 612 F. Supp. 1483 (D. R.I. 1985).
WILL VIOLATIONS EXTEND THE RESTRICTED COVENANTS?	Yes
DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON REASONABLENESS OF TEMPORAL OR GEOGRAPHIC RESTRICTIONS?	There is no statute in Rhode Island that addresses these issues.
DOES ANY STATUTE DEFINE PRESUMPTIVE PROTECTABLE LEGITIMATE BUSINESS INTERESTS?	Protectable interests include trade secrets, confidential information, customer lists, goodwill, and training in special services.

ATTORNEYS' FEES TO THE  
PREVAILING PARTY?

Yes, for breach of contract.

## South Carolina

RESPONDENT

Ola Nunez, Esq. | [Nukk-Freeman & Cerra, P.C.](#)

ARE NON-COMPETES  
ALLOWABLE OR OTHERWISE  
FAVORED?

Yes, although non-compete agreements are disfavored and strictly construed against the employer in South Carolina.

ARE EMPLOYEE AND/OR  
CUSTOMER NON-SOLICITATION  
AGREEMENTS ALLOWABLE?

Yes.

WHAT STATE STATUTES GOVERN  
NON-COMPETES? IN NO  
STATUTE EXISTS, WHAT IS THE  
LEADING CASE?

See e.g. *Rental Uniform Serv. V. Dudley*, 278 S.C. 674 (1983); *South Carolina Fin. Corp. v. West Side Fin. Corp.*, 236 S.C. 109 (1960).

HAS THE STATE ADOPTED THE  
UTSA?

Yes. South Carolina has also enacted the South Carolina Trade Secrets Act. See S.C. Code Ann. § 39-8-10, et seq.

WHAT IS THE STATUTE OF  
LIMITATIONS?

The statute of limitations on contract actions in South Carolina is three years.

ANY EXCEPTIONS TO WHICH  
RESTRICTIVE COVENANTS ARE  
NOT ALLOWED?

Restrictive covenants are only enforceable if necessary to protect legitimate business interests, supported by consideration, not unduly harsh, reasonably limited in time and geography and reasonable from a public policy standpoint.

IS CONTINUED EMPLOYMENT  
SUFFICIENT CONSIDERATION?

Restrictive covenants entered during employment require additional consideration separate from continued employment.

CAN BE ENFORCED AGAINST  
EMPLOYEES FIRED WITH OR  
WITHOUT CAUSE?

Yes.

IS THE INEVITABLE DISCLOSURE  
DOCTRINE AVAILABLE?

No.

IS BLUE PENCILING OR  
REFORMATION ALLOWED?

No.

WILL VIOLATIONS EXTEND THE  
RESTRICTED COVENANTS?

No.

DOES ANY STATUTE DEFINE  
PRESUMPTIVE LIMITATIONS ON  
REASONABLENESS OF  
TEMPORAL OR GEOGRAPHIC  
RESTRICTIONS?

No, but S.C. Code Ann. § 39-8-30(D) provides that a contract imposing a duty not to disclose trade secrets must contain a durational or geographical limit in order to be enforceable.

DOES ANY STATUTE DEFINE  
PRESUMPTIVE PROTECTABLE

No.

LEGITIMATE BUSINESS INTERESTS?

ATTORNEYS' FEES TO THE PREVAILING PARTY?

Yes.

## South Dakota

RESPONDENT

Beth Roesler, Esq. | [Goosmann Law Firm](#)

ARE NON-COMPETES ALLOWABLE OR OTHERWISE FAVORED?

Yes. South Dakota law allows non-compete agreements between an employer and an employee where the employee agrees not to engage directly or indirectly in the same business or profession as that of the employer for any period of time not exceeding two years from the date of termination of the agreement. An exception to this is that South Dakota prohibits restrictions on noncompetes among certain health care workers. SDCL 53-9-11.1.

ARE EMPLOYEE AND/OR CUSTOMER NON-SOLICITATION AGREEMENTS ALLOWABLE?

Yes. South Dakota law provides that an employee shall not solicit existing customers of the employer within a specified area for any period of time not exceeding two years from the date of termination of the agreement. The specified area must be reasonable - set out as a county, municipality, or other reasonable area, generally not to exceed a 200 mile radius.

WHAT STATE STATUTES GOVERN NON-COMPETES? IN NO STATUTE EXISTS, WHAT IS THE LEADING CASE?

SDCL 53-9-11.

HAS THE STATE ADOPTED THE UTSA?

Yes. SDCL Title 37 Ch. 29

WHAT IS THE STATUTE OF LIMITATIONS?

3 years. The statute of limitations to bring an action is within three years of when the misappropriation was discovered or should have been discovered by the exercise of reasonable diligence. SDCL 37-29-6.

ANY EXCEPTIONS TO WHICH RESTRICTIVE COVENANTS ARE NOT ALLOWED?

As previously mentioned, restrictive covenants are not allowed for certain employees in the medical profession. Such restrictive covenants pertaining to physicians, physicians assistants, and some nurses was determined to be against public policy. SDCL 53-9-11.1. The noncompete agreement must be reasonable. It is reasonable if it (1) is no greater than is required for the protection of the employer (including geographic scope and duration), (2) does not impose undue hardship on the employee, and (3) is not injurious to the public. *Central Monitoring Service v. Zakinski*, 553 N.W.2d 513, 518 (S.D. 1996).

IS CONTINUED EMPLOYMENT SUFFICIENT CONSIDERATION?

Yes. There does not have to be any new consideration for a noncompete agreement. *Central Monitoring Service v. Zakinski*, 553 N.W.2d 513, 517 (S.D. 1996)

CAN BE ENFORCED AGAINST EMPLOYEES FIRED WITH OR WITHOUT CAUSE?

Yes. Restrictive covenants entered into before or during employment with reasonable time and geographic area are enforceable regardless of how the employee's employment is terminated.



IS THE INEVITABLE DISCLOSURE DOCTRINE AVAILABLE?	No, but an injunctive relief against an employee may be obtained in order to eliminate commercial advantage that otherwise would be derived from the misappropriation. SDCL 37-29-2.
IS BLUE PENCILING OR REFORMATION ALLOWED?	Yes. <i>Ward v. Midcom, Inc.</i> , 1998 S.D. 10, ¶ 14, 575 N.W.2d 233, 238.
WILL VIOLATIONS EXTEND THE RESTRICTED COVENANTS?	Not yet decided.
DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON REASONABLENESS OF TEMPORAL OF GEOGRAPHIC RESTRICTIONS?	There is no statute for reasonableness, but caselaw provides a three-prong test for reasonableness. The noncompete is reasonable if it (1) is no greater than is required for the protection of the employer (including geographic scope and duration), (2) does not impose undue hardship on the employee, and (3) is not injurious to the public. <i>Central Monitoring Service v. Zakinski</i> , 553 N.W.2d 513, 518 (S.D. 1996). SDCL 53-9-11 specifies geographical limitations: a noncompete agreement must be "within a specified county, first- or second-class municipality, or other specified [in the agreement] area."
DOES ANY STATUTE DEFINE PRESUMPTIVE PROTECTABLE LEGITIMATE BUSINESS INTERESTS?	No.
ATTORNEYS' FEES TO THE PREVAILING PARTY?	Yes. Attorney fees are allowed when there is a contractual agreement that the prevailing party is entitled to attorney fees or there is statutory authority authorizing an award of attorney fees. <i>Crisman v. Determan Chiropractic, Inc.</i> , 2004 S.D. 103, ¶ 26, 687 N.W.2d 507, 513. See also SDCL 15-17-38; 15-6-54(d); 37-29-4 (permitting an award for violation of UTSA and for misuse of prosecuting under UTSA).

## Tennessee

RESPONDENT	Leticia Butler, Esq.   <a href="#">Wilson Turner Kosmo LLP</a>
ARE NON-COMPETES ALLOWABLE OR OTHERWISE FAVORED?	They are disfavored but are enforced if reasonable under the circumstances of the case.
ARE EMPLOYEE AND/OR CUSTOMER NON-SOLICITATION AGREEMENTS ALLOWABLE?	The courts have generally recognized three general justifications for an employer's use of a noncompetition agreement: (1) retention of existing customers, (2) protection of trade or business secrets and confidential information, and (3) the employer's investment in training or enhancing the employee's skill and experience.
WHAT STATE STATUTES GOVERN NON-COMPETES? IN NO STATUTE EXISTS, WHAT IS THE LEADING CASE?	No statute governs general non-competes. However, there are express restrictions on covenants not to compete for Attorneys and Healthcare Providers. (See, <i>Murfreesboro Med. Clinic, P.A. v. Udom</i> , 166 S.W.3d 674 (Tenn. 2005) [covenants not to compete generally]; Disciplinary Rule 2-108(A) of the Rules of the Tennessee Supreme Court, Super. Ct. Rules, Rule 8, Code of Professional Responsibility, Canon 2 [attorney restrictions]; Tenn. Code Ann., section 63-1-148 [healthcare provider restrictions].)



HAS THE STATE ADOPTED THE UTSA?	Yes. Tennessee adopted the UTSA in 2000.
WHAT IS THE STATUTE OF LIMITATIONS?	6 years.
ANY EXCEPTIONS TO WHICH RESTRICTIVE COVENANTS ARE NOT ALLOWED?	Except as expressly provided for by statute, non-competes unenforceable against Physicians. Additionally, restrictions on the enforcement of covenants not to compete within the legal profession are imposed by the state's code of professional responsibility.
IS CONTINUED EMPLOYMENT SUFFICIENT CONSIDERATION?	Yes, provided the continued employment is for an appreciably long period beyond the covenant's execution date.
CAN BE ENFORCED AGAINST EMPLOYEES FIRED WITH OR WITHOUT CAUSE?	Typically, non-competes are enforceable following termination. However, the basis for termination may be considered in assessing enforceability and bad faith termination may be cause to find restrictive covenants unreasonable and therefore unenforceable.
IS THE INEVITABLE DISCLOSURE DOCTRINE AVAILABLE?	Tennessee has not adopted the inevitable disclosure doctrine.
IS BLUE PENCILING OR REFORMATION ALLOWED?	Yes. If the employer has a protectable interest and has not been acting in bad faith, the Tennessee Supreme Court has held that the courts should enforce an agreement after modifying it to the extent necessary to protect the employer's interests without imposing undue hardship on the employee.
WILL VIOLATIONS EXTEND THE RESTRICTED COVENANTS?	Split of authority. It appears the majority lean toward not extending the period of time. However, some courts have held otherwise.
DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON REASONABLENESS OF TEMPORAL OR GEOGRAPHIC RESTRICTIONS?	No
DOES ANY STATUTE DEFINE PRESUMPTIVE PROTECTABLE LEGITIMATE BUSINESS INTERESTS?	No
ATTORNEYS' FEES TO THE PREVAILING PARTY?	Only if provided for in the non-compete agreement.

## Texas

RESPONDENT	Michael A. Carlin, Esq.   <a href="#">Zuber Lawler</a>
ARE NON-COMPETES ALLOWABLE OR OTHERWISE FAVORED?	Non-competes are allowable

ARE EMPLOYEE AND/OR CUSTOMER NON-SOLICITATION AGREEMENTS ALLOWABLE?

employee and customer non-solicitation agreements are both allowable

WHAT STATE STATUTES GOVERN NON-COMPETES? IN NO STATUTE EXISTS, WHAT IS THE LEADING CASE?

The Texas Covenants Not to Compete Act governs non-compete agreements generally (Tex. Bus. & Com. Code Ann. §§ 15.50 to 15.52)  
Non-competes for the following professionals are governed by the following statutes and rules.  
Lawyers: TX ST RPC Rule 5.06  
Physicians and Surgeons: Tex. Bus. & Com. Code Ann. § 15.50(b)  
Section 15.50(b) of the Texas Business and Commerce Code governs non-compete agreements specifically for physicians licensed by the Texas Medical Board.

HAS THE STATE ADOPTED THE UTSA?

Yes

WHAT IS THE STATUTE OF LIMITATIONS?

after breach of a non-compete Texas' 4 year statute of limitations for breach of contract applies

ANY EXCEPTIONS TO WHICH RESTRICTIVE COVENANTS ARE NOT ALLOWED?

Non-competes that contain either an industry-wide exclusion from future employment or prevent contact with clients with whom the employee had no contact are unenforceable. Generally, covenants not to compete may only extend to protections necessary to protect a company's business interests.

IS CONTINUED EMPLOYMENT SUFFICIENT CONSIDERATION?

No, non-compete clauses signed by at-will employees generally are not enforceable if they are conditioned on continued employment, because such a promise is illusory.

CAN BE ENFORCED AGAINST EMPLOYEES FIRED WITH OR WITHOUT CAUSE?

Yes, unless the non-compete specifically provides otherwise, whether an employee was terminated or voluntarily departed is irrelevant for purposes of enforcing non-compete agreements in Texas.

IS THE INEVITABLE DISCLOSURE DOCTRINE AVAILABLE?

No. However, holdings similar to the doctrine have issued in limited instances "which involved trade secrets about manufacturing processes in which it would be virtually impossible to manufacture a similar product for a competitor without using the former employer's trade secrets."

IS BLUE PENCILING OR REFORMATION ALLOWED?

Yes

WILL VIOLATIONS EXTEND THE RESTRICTED COVENANTS?

No

DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON REASONABLENESS OF TEMPORAL OR GEOGRAPHIC RESTRICTIONS?

Presumptive temporal or geographic limitations are not specifically prescribed by statute.

DOES ANY STATUTE DEFINE PRESUMPTIVE PROTECTABLE

Presumptive business interests are not specifically prescribed by statute.

## LEGITIMATE BUSINESS INTERESTS?

### ATTORNEYS' FEES TO THE PREVAILING PARTY?

Attorney's fees may be awarded to a prevailing party if there is such a provision in the agreement. However, if an employee can establish that an employer knew that the covenant was overbroad at the time of making the agreement, the employee can recover reasonable attorney's fees and costs.

## Utah

### RESPONDENT

Stacey Campbell, Esq. | [Campbell Litigation, P.C.](#)

### ARE NON-COMPETES ALLOWABLE OR OTHERWISE FAVORED?

Yes, allowed but not favored. Utah Code Ann. §§ 34-51-101 to -301.

### ARE EMPLOYEE AND/OR CUSTOMER NON-SOLICITATION AGREEMENTS ALLOWABLE?

Yes. *TruGreen Cos., L.L.C. v. Mower Bros., Inc.*, 199 P.3d 929, 932-34 (Utah 2008); .

### WHAT STATE STATUTES GOVERN NON-COMPETES? IN NO STATUTE EXISTS, WHAT IS THE LEADING CASE?

Utah Code Ann. §§ 34-51-101-301

### HAS THE STATE ADOPTED THE UTSA?

Yes. Utah Code Ann. §§ 13-24-1 through -9

### WHAT IS THE STATUTE OF LIMITATIONS?

3 years (UUTSA) Utah Code Ann. §§ 13-24-7; 6 years (breach of written contract) Utah Code Ann. § 78B-2-309(1)(b); 4 years (breach of unwritten contract) Utah Code Ann. § 78B-2-307(1)(a).

### ANY EXCEPTIONS TO WHICH RESTRICTIVE COVENANTS ARE NOT ALLOWED?

Yes. Broadcasting Employees: Utah Code Ann. § 34-51-201(2); Attorneys: Utah Rules of Professional Conduct 5.6

### IS CONTINUED EMPLOYMENT SUFFICIENT CONSIDERATION?

Yes. *System Concepts, Inc. v. Dixon*, 669 P.2d 421,426-27, 429 (Utah 1983).

### CAN BE ENFORCED AGAINST EMPLOYEES FIRED WITH OR WITHOUT CAUSE?

Yes. Utah Code § 34-51-201(1); *Allen v. Rose Park Pharm.*, 237 P.2d 823, 824, 828 (Utah 1951).

### IS THE INEVITABLE DISCLOSURE DOCTRINE AVAILABLE?

Possibly. *Novell, Inc. v. Timpanogos Research Grp., Inc.*, 1998 WL 177721, at \*29 (Utah Dist. Ct. Jan. 30, 1998) (Utah appellate courts have not addressed the doctrine of inevitable disclosure, but circumstances of this dispute warranted application).

### IS BLUE PENCILING OR REFORMATION ALLOWED?

Not as to temporal restrictions (any non-compete agreement exceeding one year is void). Utah Code Ann. § 35-51-201(1). Unclear if blue-penciling permitted to fix geographic scope.

### WILL VIOLATIONS EXTEND THE RESTRICTED COVENANTS?

Unknown (no case law on issue).

DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON REASONABLENESS OF TEMPORAL OF GEOGRAPHIC RESTRICTIONS?

Yes. Post-employment noncompete agreements are void if they exceed one year in duration. Utah Code Ann. § 34-51-201(1).

DOES ANY STATUTE DEFINE PRESUMPTIVE PROTECTABLE LEGITIMATE BUSINESS INTERESTS?

Utah Code Ann. § 34-51-102(5) defines "sale of business" for purposes of permissible restrictive covenants.

ATTORNEYS' FEES TO THE PREVAILING PARTY?

Yes, but one-sided. Employers liable for attorney fees and court costs when seeking to enforce a noncompete agreement that is unenforceable. Utah Code Ann. § 34-51-301

## Vermont

RESPONDENT

Sara Perez, Esq. | [Perez Morris](#)

ARE NON-COMPETES ALLOWABLE OR OTHERWISE FAVORED?

Yes, non-competes are allowable.

ARE EMPLOYEE AND/OR CUSTOMER NON-SOLICITATION AGREEMENTS ALLOWABLE?

Vermont law is unclear as to whether employee non-solicitation agreements are allowable, but customer non-solicitation agreements are allowable.

WHAT STATE STATUTES GOVERN NON-COMPETES? IN NO STATUTE EXISTS, WHAT IS THE LEADING CASE?

Vermont has no general statute or regulation governing non-competes. The leading case is *Sys. & Software, Inc. v. Barnes*, 886 A.2d 762 (Vt. 2005).

HAS THE STATE ADOPTED THE UTSA?

Yes. Vt. Stat. Ann. Tit. 9, § 4601.

WHAT IS THE STATUTE OF LIMITATIONS?

The statute of limitations under the Vermont Trade Secrets Act is 6 years. Vt. Stat. Ann. Tit. 12, § 523.

ANY EXCEPTIONS TO WHICH RESTRICTIVE COVENANTS ARE NOT ALLOWED?

There are no specific exceptions, but Vermont's Court Rules provide that lawyers should not enter into non-compete agreements. Vt. R. Prof. Cond. Rule 5.6.

IS CONTINUED EMPLOYMENT SUFFICIENT CONSIDERATION?

Yes, continued at-will employment is sufficient consideration. *Summits 7, Inc. v. Kelly*, 178 Vt. 396 (Vt. 2005).

CAN BE ENFORCED AGAINST EMPLOYEES FIRED WITH OR WITHOUT CAUSE?

There is no reported Vermont case or statute prohibiting enforcement of a non-compete if the employer terminates the relationship.

IS THE INEVITABLE DISCLOSURE DOCTRINE AVAILABLE?

Vermont courts have not addressed the inevitable disclosure doctrine.

IS BLUE PENCILING OR  
REFORMATION ALLOWED?

No, Vermont courts have refused to modify and enforce overly-broad non-compete agreements. *Roy's Orthopedic, Inc. v. Lavigne*, 454 A.2d 1242 (Vt. 1982).

WILL VIOLATIONS EXTEND THE  
RESTRICTED COVENANTS?

No

DOES ANY STATUTE DEFINE  
PRESUMPTIVE LIMITATIONS ON  
REASONABLENESS OF  
TEMPORAL OR GEOGRAPHIC  
RESTRICTIONS?

There is no statute in Vermont that addresses these issues.

DOES ANY STATUTE DEFINE  
PRESUMPTIVE PROTECTABLE  
LEGITIMATE BUSINESS  
INTERESTS?

Protectable interests include trade secrets, confidential customer information, employee-specific goodwill, and relationships with customers. *Sys. & Software, Inc.*, 886 A.2d 762, 764 (Vt. 2005).

ATTORNEYS' FEES TO THE  
PREVAILING PARTY?

Yes. Vt. Stat. Ann. Tit. 9, § 4603 (2014).

## Virginia

RESPONDENT

Jamie Augustinsky, Esq. | (formerly with NAMWOLF firm) [The Axelrod Firm](#)

ARE NON-COMPETES  
ALLOWABLE OR OTHERWISE  
FAVORED?

Yes. Must be reasonable in that it is no greater than necessary to protect a legitimate business interest; must not be unduly harsh to curtail the employee's legitimate efforts to earn a livelihood; and must be sound in public policy. *Assurance Data, Inc. v. Malyevac*, 286 Va. 137, 144 (2013).

ARE EMPLOYEE AND/OR  
CUSTOMER NON-SOLICITATION  
AGREEMENTS ALLOWABLE?

Yes. Same standard as non-competes.

WHAT STATE STATUTES GOVERN  
NON-COMPETES? IN NO  
STATUTE EXISTS, WHAT IS THE  
LEADING CASE?

Va. Code Ann. 40.1-28.7:8 prohibits non-compete agreements between employers and low-wage employees.

HAS THE STATE ADOPTED THE  
UTSA?

Yes. Va. Code Ann. 59.1-336

WHAT IS THE STATUTE OF  
LIMITATIONS?

3 years VAUTSA; 5 years breach of contract

ANY EXCEPTIONS TO WHICH  
RESTRICTIVE COVENANTS ARE  
NOT ALLOWED?

Va. Code Ann. 40.1-28.7:8 prohibits non-compete agreements between employers and low-wage employees. Additionally, Virginia Rule of Professional Conduct 5.6 prohibits attorneys from entering into non-compete agreements.

IS CONTINUED EMPLOYMENT  
SUFFICIENT CONSIDERATION?

Yes, for those signed with the initial employment agreement at the inception of employment. With respect to those signed after the commencement of employment, there is a split in authority.

CAN BE ENFORCED AGAINST EMPLOYEES FIRED WITH OR WITHOUT CAUSE?	Yes for those fired with cause; No authority explicitly addressing enforcement after a without-cause termination.
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IS THE INEVITABLE DISCLOSURE DOCTRINE AVAILABLE?	No.
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IS BLUE PENCILING OR REFORMATION ALLOWED?	No.
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WILL VIOLATIONS EXTEND THE RESTRICTED COVENANTS?	Yes.
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DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON REASONABLENESS OF TEMPORAL OR GEOGRAPHIC RESTRICTIONS?	No.
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DOES ANY STATUTE DEFINE PRESUMPTIVE PROTECTABLE LEGITIMATE BUSINESS INTERESTS?	No.
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ATTORNEYS' FEES TO THE PREVAILING PARTY?	Yes, when provided for by contract; Additionally, attorney's fees can be awarded when employer violates the statute prohibiting non-competes with low wage employees.
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## Washington

RESPONDENT	Aviva Kamm, Esq.   (formerly with NAMWOLF firm) <a href="#">Stokes Lawrence, P.S.</a>
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ARE NON-COMPETES ALLOWABLE OR OTHERWISE FAVORED?	Allowable but generally disfavored.
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ARE EMPLOYEE AND/OR CUSTOMER NON-SOLICITATION AGREEMENTS ALLOWABLE?	Yes, with restrictions. Non-solicitation agreements are permitted in Washington so long as they are reasonable. Whether a covenant is reasonable involves consideration of three factors: (1) whether the restraint is necessary for the protection of the business or goodwill of the employer; (2) whether it imposes on the employee any greater restraint than is reasonably necessary; and (3) whether the degree of public injury is such to warrant non-enforcement of the covenant.
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WHAT STATE STATUTES GOVERN NON-COMPETES? IN NO STATUTE EXISTS, WHAT IS THE LEADING CASE?	RCW 49.62 (Complete Chapter)
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HAS THE STATE ADOPTED THE UTSA?	Yes. RCW 19.108
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WHAT IS THE STATUTE OF LIMITATIONS?	Noncompetition claims are treated as contract claims, with a 3-year limitations period for most claims and a 6-year limitations period for written contracts.
ANY EXCEPTIONS TO WHICH RESTRICTIVE COVENANTS ARE NOT ALLOWED?	Yes, see RCW 49.62.020 (as against employees) and .030 (as against independent contractors).
IS CONTINUED EMPLOYMENT SUFFICIENT CONSIDERATION?	Generally, no, but an initial offer of at-will employment is sufficient. <i>Labriola v. Pollard Group, Inc.</i> , 152 Wn.2d 828 (2004).
CAN BE ENFORCED AGAINST EMPLOYEES FIRED WITH OR WITHOUT CAUSE?	Yes
IS THE INEVITABLE DISCLOSURE DOCTRINE AVAILABLE?	Washington courts have neither adopted nor rejected the inevitable disclosure doctrine. See <i>Moore v. Commercial Aircraft Interiors, LLC</i> , 168 Wn.App. 502, 512-513 (2012); cf RCW 49.62.05, legislative finding that workforce mobility is important to economic growth and development.
IS BLUE PENCILING OR REFORMATION ALLOWED?	Reformation permitted.
WILL VIOLATIONS EXTEND THE RESTRICTED COVENANTS?	Not automatically, but contracts with so-called "evergreen" clauses have been enforced.
DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON REASONABLENESS OF TEMPORAL OF GEOGRAPHIC RESTRICTIONS?	Yes, the law presumes that a restriction longer than 18 months is unreasonable. See RCW 49.62.020 (as against employees) and .030 (as against independent contractors).
DOES ANY STATUTE DEFINE PRESUMPTIVE PROTECTABLE LEGITIMATE BUSINESS INTERESTS?	No.
ATTORNEYS' FEES TO THE PREVAILING PARTY?	Prevailing party fees dependent on the language of the agreement. RCW 49.62.080 mandates fees (in addition to other remedies) for the person "aggrieved" by the noncompetition agreement -- not available for the employer under the statute even if the employer prevails.

## West Virginia

RESPONDENT	Deborah Brouwer, Esq.   <a href="#">Nemeth Bonnette Brouwer PC</a>
ARE NON-COMPETES ALLOWABLE OR OTHERWISE FAVORED?	Yes. West Virginia generally enforces non-competition agreements if they are supported by consideration, supplemental to the original employment contract, contain a reasonable geographic scope that is limited to what is necessary to protect the business's legitimate business interest(s), and aligned with public policy. <i>Reddy v. Health Found. of Man</i> , 171 W.Va. 368 (1982).
ARE EMPLOYEE AND/OR CUSTOMER NON-SOLICITATION AGREEMENTS ALLOWABLE?	West Virginia views non-solicitation agreements as less restrictive and enforceable if the clause protects the employer's legitimate business interest(s), is reasonable overall, does not unfairly restrict the employee from engaging in

the business activity that the employee seeks to pursue. *Wood v. Acordia of W. Va., Inc.*, 217 W. Va. 406 (2005). West Virginia Code §§ 47-11E-1 to 47-11E-5 does not prohibit agreements that include the non-solicitation of patients and employees.

WHAT STATE STATUTES GOVERN NON-COMPETES? IN NO STATUTE EXISTS, WHAT IS THE LEADING CASE?

West Virginia does not have a state statute or regulation governing non-competition clauses. Certain profession-specific rules and codes of conduct exist that govern non-compete agreements for attorneys and physicians. For attorneys, Rule 5.6 of the West Virginia Rules of Professional Conduct governs non-competition agreements. West Virginia Code §§ 47-11E-1 to 47-11E-5 governs physician-specific non-competition agreements. For most non-competition agreements, see *Reddy v. Health Found. of Man*, 171 W. Va. 368 (1982).

HAS THE STATE ADOPTED THE UTSA?

Yes. West Virginia Code § 47-22 is the state's adoption of the Uniform Trade Secret Act.

WHAT IS THE STATUTE OF LIMITATIONS?

The statute of limitations for a breach of a written contract is 10 years. W. Va. § 55-22-6. The statute of limitations for a breach of an oral contract is 5 years. § 55-2-6.

ANY EXCEPTIONS TO WHICH RESTRICTIVE COVENANTS ARE NOT ALLOWED?

West Virginia courts have not considered managerial knowledge and skills as a protectable business interest. Specific managerial knowledge and skills that West Virginia courts have held as unprotectable include supervising, merchandising, purchasing, and advertising. *Special Servs. Bureau, Inc. v. Friend*, 2019 WL 4257185 (W. Va. Sept. 9, 2019).

IS CONTINUED EMPLOYMENT SUFFICIENT CONSIDERATION?

No. In the event that a non-compete clause is drafted after employment has commenced, new consideration must be given to support it. *Environmental Products Co., Inc. v. Duncan*, 168 W. Va. 349, 351 (1981).

CAN BE ENFORCED AGAINST EMPLOYEES FIRED WITH OR WITHOUT CAUSE?

West Virginia courts have enforced non-compete agreements whether the employee's employment was terminated by the employee or the employer. Employers in West Virginia may be unable to enforce a non-compete agreement if they terminate an employee without notice or cause. *Chicago Towel Co. v. Reynolds*, 108 W. Va. 615 (W. Va. 1930); but see *Costanzo v. EMS USA, Inc.*, 2017 WL 4215652 (N.D. W. Va. Sept. 17, 2021)(noncompete found reasonable on its face where at-will employee was discharged for cause).

IS THE INEVITABLE DISCLOSURE DOCTRINE AVAILABLE?

The inevitable disclosure doctrine has not been recognized by West Virginia courts.

IS BLUE PENCILING OR REFORMATION ALLOWED?

West Virginia courts are permitted to blue pencil a non-compete agreement if the agreement is found to be reasonable and was agreed upon in good faith. *Reddy v. Health Found. of Man*, 171 W. Va. 368, 376 (1982).

WILL VIOLATIONS EXTEND THE RESTRICTED COVENANTS?

No. Injunctive relief cannot be granted for a period longer than the restrictive period of the covenant not to compete. *Standard Hydraulics, Inc. v. Kerns*, 182 W. Va. 225, 226 (1989).

DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON REASONABLENESS OF

No. The only statute defining presumptive limitations on reasonableness of temporal/geographical restrictions limits a non-compete for a physician to no more than one year and be 30 miles from the physician's primary place of



## TEMPORAL OF GEOGRAPHIC RESTRICTIONS?

practice with the employer. W. Va. §§ 47-11E-1 to 47-11E-5. West Virginia uses the "rule of reason" to determine if a non-compete's duration and geographical scope is reasonable to protect an employer's legitimate business interest. Although both the temporal and geographic restrictions are considered jointly, West Virginia courts have not enforced non-compete agreements that do not specify any geographical limit regardless of what duration is listed. For example, West Virginia courts have voided a one-year non-compete agreement on public policy grounds even though the duration was only a single year because there was no geographical limit listed. *Pancake Realty Co. v. Harber*, 137 W. Va. 605 (1952).

## DOES ANY STATUTE DEFINE PRESUMPTIVE PROTECTABLE LEGITIMATE BUSINESS INTERESTS?

No. West Virginia defines a "protectable business interest" as a skill that goes beyond the general knowledge of administrative duties within the industry. "When the skills and information acquired by a former employee are of a general managerial nature, such as supervisory, merchandising, purchasing and advertising skills and information, a restrictive covenant in an employment contract will not be enforced because such skills and information are not protectable employer interests." *Helms Boys, Inc. v. Brady*, 171 W. Va. 66 (1982).

## ATTORNEYS' FEES TO THE PREVAILING PARTY?

In West Virginia, attorneys' fees are recoverable if provided for in the agreement. *Panhandle Cleaning & Restoration, Inc. v. Vannest*, 2012 WL 4757906 (N.D. W. Va. Oct. 5, 2012).

# Wisconsin

## RESPONDENT

Sonia Miller-Van Oort, Esq. | [Sapientia Law Group](#)

## ARE NON-COMPETES ALLOWABLE OR OTHERWISE FAVORED?

Allowable, but disfavored

## ARE EMPLOYEE AND/OR CUSTOMER NON-SOLICITATION AGREEMENTS ALLOWABLE?

Yes

## WHAT STATE STATUTES GOVERN NON-COMPETES? IN NO STATUTE EXISTS, WHAT IS THE LEADING CASE?

Wis. Stat. § 103.465. (2022)

## HAS THE STATE ADOPTED THE UTSA?

Yes. Wis. Stat. § 134.90 (2022).

## WHAT IS THE STATUTE OF LIMITATIONS?

Three years. Wis.Stat. § 893.51(2)

## ANY EXCEPTIONS TO WHICH RESTRICTIVE COVENANTS ARE NOT ALLOWED?

Under Wis. Stat. § 103.465, "a noncompetition agreement that imposes any unreasonable restriction is entirely unenforceable, but under the common law 'rule of reason' a noncompetition agreement that imposes one or more unreasonable restrictions may be reformed and enforced to the extent that it is

reasonable to do so.” *Auto-Chlor Sys. of the Mid-S., LLC v. Ehlert*, 2021 WI App 67, ¶ 10, 965 N.W.2d 183.

IS CONTINUED EMPLOYMENT  
SUFFICIENT CONSIDERATION?

Yes, if continued employment is a condition of the employee signing the non-compete agreement.

CAN BE ENFORCED AGAINST  
EMPLOYEES FIRED WITH OR  
WITHOUT CAUSE?

Maybe. If continued employment is consideration for the non-complete agreement and an employee is fired, the employee may then, theoretically, “be protected by other contract formation principles such as fraudulent inducement or good faith and fair dealing, so that the restrictive covenant could not be enforced

IS THE INEVITABLE DISCLOSURE  
DOCTRINE AVAILABLE?

No cases address this issue in Wisconsin.

IS BLUE PENCILING OR  
REFORMATION ALLOWED?

Yes

WILL VIOLATIONS EXTEND THE  
RESTRICTED COVENANTS?

Not likely

DOES ANY STATUTE DEFINE  
PRESUMPTIVE LIMITATIONS ON  
REASONABLENESS OF  
TEMPORAL OR GEOGRAPHIC  
RESTRICTIONS?

No presumptive limitations. The key is reasonableness. “The absence of a geographic ‘territorial limit’ does not for that reason alone invalidate a non-compete agreement.”

DOES ANY STATUTE DEFINE  
PRESUMPTIVE PROTECTABLE  
LEGITIMATE BUSINESS  
INTERESTS?

Yes. Wis. Stat. § 134.90(1)(c).

ATTORNEYS' FEES TO THE  
PREVAILING PARTY?

Regarding the WI UTSA, reasonable attorney’s fees are available to the prevailing party under three circumstances: (1) where an employer claims misappropriation in bad faith, (2) where a made to terminate an injunction is made or resisted in bad faith, or (3) where the misappropriation is willful and deliberate. Wis. Stat. § 134.90(4)(c) (2022).

## Wyoming

RESPONDENT

Stacey Campbell, Esq. | [Campbell Litigation, P.C.](#)

ARE NON-COMPETES  
ALLOWABLE OR OTHERWISE  
FAVORED?

Yes, allowed but not favored. *Hopper v. All Pet Animal Clinic*, 861 P.2d 531, 540 (Wyo. 1993), overruled in part on other grounds by *Hassler v. Circle C Resources*, 505 P.3d 169 (Wyo. 2022).

ARE EMPLOYEE AND/OR  
CUSTOMER NON-SOLICITATION  
AGREEMENTS ALLOWABLE?

Yes. *USI Ins. Services LLC v. Craig*, 2019 WL 5295533, at \*3-4 (D. Wyo. Apr. 9, 2019) (direct client/customer solicitation).

WHAT STATE STATUTES GOVERN  
NON-COMPETES? IN NO

No statute or regulation(s). *Hopper v. All Pet Animal Clinic*, 861 P.2d 531, 540 (Wyo. 1993), overruled in part on other grounds by *No Hassler v. Circle C Resources*, 505 P.3d 169 (Wyo. 2022).

STATUTE EXISTS, WHAT IS THE LEADING CASE?

HAS THE STATE ADOPTED THE UTSA?

Yes. Wyo. Stat. Ann. §§ 40-24-101 to 110.

WHAT IS THE STATUTE OF LIMITATIONS?

4 years (WUTSA) Wyo. Stat. § 40-24-106; 10 years (breach of written contract) Wyo. Stat. Ann. § 1-3-105(a)(i); 8 years (breach of unwritten contract) Wyo. Stat. Ann. § 1-3-105(a)(ii)(A).

ANY EXCEPTIONS TO WHICH RESTRICTIVE COVENANTS ARE NOT ALLOWED?

Yes. Attorneys: WY Rules of Professional Conduct Rule 5.6.

IS CONTINUED EMPLOYMENT SUFFICIENT CONSIDERATION?

No. *Brown v. Best Home Health & Hospice, LLC*, 491 P.3d 1021, 1028 (Wyo. 2021)

CAN BE ENFORCED AGAINST EMPLOYEES FIRED WITH OR WITHOUT CAUSE?

No. (*Hopper v. All Pet Animal Clinic, Inc.*, 861 P.2d 531 (Wyo. 1993), overruled in part on other grounds by *Hassler v. Circle C Resources*, 505 P.3d 169 (Wyo. 2022) (covenant unenforceable if employee terminated without cause and in bad faith).

IS THE INEVITABLE DISCLOSURE DOCTRINE AVAILABLE?

No. Non-Compete Laws: Wyoming, Practical Law State Q&A 4-532-6567. (Wyoming courts have not recognized the doctrine of inevitable disclosure)

IS BLUE PENCILING OR REFORMATION ALLOWED?

No. *Hassler v. Circle C Resources*, 505 P.3d 169, 178 (Wyo. 2022).

WILL VIOLATIONS EXTEND THE RESTRICTED COVENANTS?

Unknown (no case law on issue).

DOES ANY STATUTE DEFINE PRESUMPTIVE LIMITATIONS ON REASONABLENESS OF TEMPORAL OF GEOGRAPHIC RESTRICTIONS?

No Statute.

DOES ANY STATUTE DEFINE PRESUMPTIVE PROTECTABLE LEGITIMATE BUSINESS INTERESTS?

No Statute.

ATTORNEYS' FEES TO THE PREVAILING PARTY?

Yes, when the right is contractual. *Levy v. Aspen S, LLC*, 483 P.3d 852, 856 (Wyo. 2021) (contractual fee-shifting provisions generally permissible).

## Footnote on Top Hat Plans

Sherrie Boutwell | [Boutwell Fay LLP](#)

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Due to ERISA's broad preemption provision, courts have enforced non-compete provisions in "Top Hat" plans (unfunded, non-qualified, deferred compensation plans for executives as described in Sections 201, 301 and 401 of ERISA) even when such provisions would be otherwise unenforceable under state laws. See, e.g., *Lojek v. Thomas*, 716 F2d 675 (9th Cir 1983) and *Conklin v. Brookfield Homes Holdings, Inc.*, No. SACV 08-00452-CJC (PJWx), 2009 U.S. Dist. LEXIS 134870 at \*10 (C.D. Cal. Oct. 6, 2009). Other resources: FAQ - What are Top Hat Plan Basics/Boutwell Fay/Irvine, CA 29 CFR Section 2520.104-23.