my HR counsel

Non-Compete Agreements- How does your state courts or statutes address non-compete agreements

State	Main provisions of law
FED	One of the most common contractual provisions used in employment situations is the covenant not to compete or “restrictive covenant.” These clauses serve to dissuade employees from leaving after you have invested a lot of time and money in them and limit their ability to compete with you after they leave.Restrictive covenants can be absolutely vital in protecting your investment in a new employee and guarding your proprietary secrets. And because most people want to honor their commitments, they can be a powerful incentive for your best employees to stay. For the most part, they should be reserved only for high-level employees whose competitive knowledge or skill could damage your business if used elsewhere.Although there are some general rules of thumb for whether a court will find a contested restricted covenant enforceable or not, the degree to which these courts will back a restrictive covenant differs significantly from state to state.
AL	Effective January 1, 2016, Alabama's statute governing the enforcement of restrictive covenants (8-1-1) has been completely overhauled.Â The new law provides for the enforceability of restrictive covenants in different contexts:No-hire agreements for key employees:Â An agreement between two employers not hire the otherâ€™semployee will be enforceable where the employee â€•holdsa position uniquely essentialâ€•to the business. Â Exclusivebusiness dealings: An agreement between two businesses to limit commercial dealings to each other will be enforceable.Sale of business:Â When someone sells a business (including its good will), the seller may agree not to compete with the buyer as long as reasonably limited in the time and place.Â The statute provides that restraints of one year or less are presumed to be reasonable.Non-competes for employees and agents:Â An employee or agent can agree with a â€œcommercialentityâ€•not to engage in a similar business within a specified territory.Â The statute provides that restraints of two years or less are presumed to be reasonable.Â Note that this provision is not limited to employers, but includes any â€œcommercialentity.â€•Â This suggests businesses could enter non-competes with independent contractors, staffing agency employees and temp agency employees.Non-solicitation agreements: An employee or agent can agree with a â€œcommercialentityâ€•not to solicit the current customers of the commercial entity subject to reasonable time constraints.Â The statute provides that restraints of eighteen months or less (or as long as post-termination pay continues, whichever is longer) are presumed to be reasonable.Â Once again, note that this is not limited to employer-employee relationships.Business dissolution: The owners of a business can mutually agree that none of them will carry on a similar business in the same geographic area.To be enforceable, the employer has to have a â€œprotectableinterestâ€•in preventing the employee from competing.Â The statute sets out what types of interests will support a non-compete:Â trade secrets, confidential information (such as pricing, customer lists, marketing plans and business strategy), customer contacts, customer good will, specialized and unique training (but more than mere job skills).Â The restrictions have to be tailored to protect one or more of these types of interests. To be enforceable, the agreement has to be in writing and signed by all parties. If the agreement overreaches, the

	statute allows a court to reform it as necessary to preserve the protectable interest.Â ©itation: Ala. Code Â§ 8-1-1.
AK	Alaska courts strictly construe noncompetes and view them with disfavor. Noncompetes are analyzed for "reasonableness." Several factors are to be considered in determining reasonableness: time and geographic limits, whether an employee represents the sole contact with a customer, whether an employee possesses confidential information or trade secrets, whether the agreement seeks to eliminate competition that would be unfair to the employer or merely seeks to eliminate ordinary competition, whether the agreement seeks to stifle the inherent skill and experience of the employee, whether the benefit to the employer is disproportional to the detriment of the employee, whether the agreement acts as a bar to the employee's sole means of support, whether the employee's talent that the employer seeks to suppress was actually developed during the period of employment, and whether the forbidden employment is merely incidental to the main employment.• *Citation: DeCristofaro v. Security National Bank*, 664 P.2d 167, 168-69 (Alaska 1983); *Metcalfe Investments, Inc. v. Garrison*, 919 P.2d 1356, 1361-62 (Alaska 1996); and *Data Management, Inc. v. Greene*, 757 P.2d 62, 64-65 (Alaska 1988).
AZ	Only reasonable restraints will be enforced — "those no broader than the employer's legitimately protectable interests." Arizona courts do not consider "competition per se" a legitimately protectable interest. Additionally, the courts routinely scrutinize time and territorial limitations. Courts have upheld small territorial limitations, and noncompetes may be effective long enough to obliterate any identification between the employer and former employee in the minds of customers and long enough to permit the employer to find and train a replacement. Courts have concluded that a noncompete was justifiable when the training of a replacement would take one to two years. Courts will modify noncompetes, eliminating severable unreasonable provisions, but courts will not add provisions or rewrite terms to make an agreement enforceable. Also, TV, radio stations, and networks are prohibited from requiring employees or applicants to agree to a noncompete clause as a condition of employment.• *Citation:* **General:** *Amex Distributing Co., Inc. v. Mascari*, 150 Ariz. 510, 515, 518, 724 P.2d 596, 601, 604 (App. 1986), and *Valley Medical Specialists v. Farber*, 194 Ariz. 363, 372, 982 P.2d 1277, 1286 (1999). **TV, radio, networks:** A.R.S. §23-494.
AR	Arkansas courts recognize noncompetes. The courts have noted that the burden is on the party challenging the agreement to show that it's unreasonable, and agreements are reviewed on a case-by-case basis. A court has recognized that for an agreement to be enforced, three requirements must be met: (1) the employer must have a valid interest to protect, (2) the geographical restriction must not be overly broad, and (3) a reasonable time limit must be imposed.• *Citation: Federated Mut. Ins. Co. v. Bennett*, 36 Ark. App. 99, 818 S.W.2d 596 (1991); *Moore v. Midwest Distrib., Inc.*, 76 Ark. App. 397, 65 S.W.3d 490 (2002); and *Duffner v. Alberty*, 19 Ark. App. 137, 718 S.W. 2d 111 (1986).
CO	Noncompete agreements and covenants not to solicit customers that restrict "the right of any person to receive compensation for performance of skilled or unskilled labor for any employer" are void except in limited circumstances. Employee non-solicitation agreements are not void under Colorado law; however, such agreements may only prohibit a former employee from initiating contact with current employees to work for a competitor, not from hiring a current employee who was not approached by the former employee. If a noncompete agreement or covenant not to solicit customers is presented to existing employees, consideration must be given for the agreement to be enforceable. Continued at-will employment, however, can be sufficient consideration assuming the noncompete agreement or covenant not to solicit customers is otherwise enforceable. Colorado does not favor noncompete agreements. They are generally unenforceable unless they fall within one of the narrow statutory exceptions allowed under Colorado's noncompete statute. One of

	those exceptions includes noncompetes for "executive and management personnel." To fit within this exception, managers do not need to be key personnel within the firm.• *Citation:* **Noncompete/Customer non-solicitation agreements:** C.R.S. §8-2-113(2), *Saturn Systems, Inc. v. Militare*, 252 P.3d 516, (Colo. App. 2011), *Management Recruiters of Boulder v. Miller*, 762 P.2d 763 (Colo. App. 1988), *National Graphics Co. v. Dilley*, 681 P.2d 546 (Colo. App. 1984). **Employee non-solicitation agreements:** *National Propane Corp. v. Miller*, 18 P.3d 782 (Colo. App. 2000), and *Atmel Corp. v. Vitesse Semiconductor Corp*., 30 P.3d 789 (Colo. App. 2001). **Consideration required for noncompete given to existing employee:** *Lucht's Concrete Pumping, Inc. v. Horner*, 255 P.3d 1058 (Colo. 2011). **Managerial exception does not require manager be key personnel:** *DISH Network Corp. v. Altomari*, 224 P.3d 362 (Colo. App. 2009).
CT	Noncompetes are enforceable provided they are reasonable. Courts will look to five factors: (1) the length of time the restriction operates, (2) the geographical area covered, (3) the fairness of the protection accorded to the employer, (4) the extent of the restraint on the employee's opportunity to pursue his occupation, and (5) the extent of the interference with the public's interest. Forfeiture clauses that operate as noncompete agreements are treated by courts as noncompete agreements. Public Act 13-309 requires that new non-compete agreements reached after October 1, 2013, must give the employee seven days to consider the merits. This act applies only to businesses that are newly acquired or merging. • *Citation: Weiss and Associates, Inc. v. Wiederlight et al.*, 208 Conn. 525, 546 A.2d 216 (1988); *Deming v. Nationwide Mut. Ins. Co.*, 279 Conn. 745, 905 A.2d 623, Conn., (2006).
DE	The Delaware Court of Chancery has proved willing to enforce narrowly tailored noncompetes. In recent years, the Court of Chancery has expressed reservations over adjusting the provisions of overly broad restrictive covenants. • *Citation: American Homepatient, Inc. v. Collier*, 2006 WL 1134170 (Del. Ch. Apr. 19, 2006); *Delaware Express Shuttle, Inc. v. Older*, 2003 Del. Ch. LEXIS 37 (Del. Ch. Apr. 9, 2003); *Research & Trading Co. v. Pfuhl*, 1992 Del. Ch. LEXIS 234 (Del. Ch. Nov. 19, 1992); *RHIS, Inc. v. Boyce*, 2001 Del. Ch. LEXIS 118 (Del. Ch. Sept. 26, 2001); *Delaware Elevator, Inc. v. Williams*, No. 5596-VCL, 2011 Del. Ch. LEXIS 47 (Del. Ch. Mar. 16, 2011).
DC	D.C. law prohibits unreasonable restraints of trade. But courts have proven willing to enforce noncompetes provided they are (1) reasonable as to time and area, (2) necessary for the protection of the employer, and (3) intended and agreed upon by the parties. A statute provides that any noncompete agreement made by an employee in the broadcasting industry is unenforceable.• *Citation:* D.C. Code §28-4502 (1981); *National Chemsearch Corporation of New York v. Hanker*, 309 F. Supp. 1278 (D.D.C. 1970); D.C. Code §32-532.
FL	Florida law, while strictly construing noncompete agreements against enforcement, does allow for such agreements. They must be in writing; reasonable in time, geographic area, and line of business; and reasonably necessary to protect one or more legitimate business interests. In the context of the traditional employer and employee relationship, courts will presume any restraint six months or less in duration to be reasonable and more than two years in duration to be unreasonable.• *Citation:* FSA §542.33 (pre-July 1, 1996) and §542.335 (post-July 1, 1996).
GA	Historically, Georgia courts have been extremely strict when addressing noncompetes, requiring them to be reasonably limited as to scope, time, and geographic restrictions. Georgia courts refused to "blue pencil," so if a clause violated the law, the entire provision was removed.O.C.G.A. 13-8-2.1 now allows courts to "blue pencil" noncompete agreements that are overbroad, rather than holding them completely unenforceable. The new law only applies to contracts executed on or after the

	effective date of the statute; older agreements are still governed by prior, stricter case law.There has, however, been some controversy and confusion surrounding this effective date. Though O.C.G.A. 13-8-2.1 was initially passed in 2009, it could not take effect until passage of a companion amendment to the state constitution. This amendment was approved by Georgia voters on November 2, 2010, yet issues raised regarding the validity of portions of the law further complicated the determination of the effective date of the measure. The law itself claimed to take effect the day after voter passage (November 3), yet the constitutional amendment would not have taken effect until January 1, 2011, at which point some critics still felt the law was invalid.To clear up this confusion, H.B. 30, signed on May 11, 2011, made the new noncompete law effective and gives assurance that the new law applies to all contracts executed after that date. It is also certain that contracts entered into before November 3, 2010, are subject to the old law. For agreements entered into between those dates, courts will have to interpret which law applies. The Eleventh Circuit has also clarified that the Georgia Restrictive Covenants Act ("RCA") was ineffective until May 11, 2011, the day that the Governor signed the legislation. *Becham v. Crosslink Orthopaedics,* Civil Action No. 11-14495 (11th Cir. June 4, 2012).• *Citation:* O.C.G.A. §13-8-2.1 and *Gale Indus., Inc. v. O'Hearn*, 257 Ga. App. 220, 222 (2002).
HI	State law provides that noncompetes aren't per se illegal. The Hawaii Supreme Court has held that a noncompete is unenforceable if (1) it's greater than required for the protection of the person for whose benefit it's imposed; (2) it imposes undue hardship on the person restricted; or (3) its benefit to the employer is outweighed by injury to the public. In making that analysis, the court will examine the geographical scope, length of time, and the breadth of the restriction placed on a given activity. Neither case law nor statute identifies any specific restrictions that are reasonable or unreasonable.• *Citation:* HRS §480-4. *Technicolor, Inc. v. Trager*, 57 Haw. 113, 551 P.2d 163 (1976).
ID	A written agreement or covenant that protects the employer's legitimate business interests and prohibits key employees or key independent contractors from engaging in employment in line of business that is in direct competition with employer's business is enforceable if reasonable as to duration, geographical area, type of employment/line of business, and does not impose a greater restraint than reasonably necessary to protect the employer's legitimate business interests. Under no circumstances shall the agreement establish a post-employment restriction exceeding 18 months. Certain terms will be presumed reasonable, subject to rebuttal by the covered employee. If such an agreement is found to be unreasonable in any respect, a court shall limit or modify the agreement as it deems necessary to reflect the intent of the parties and render it reasonable in light of the circumstances in which it was made. The court shall then enforce the agreement as limited or modified.• *Citation:* I.C. 44-2701 through 44-2704.
IL	Noncompetes are enforceable if the terms are reasonable and necessary to protect a legitimate, protectable business interest of the employer. Noncompetes must be reasonable in regard to time, territory, and activity restrictions. In December 2011, the Illinois Supreme Court clarified that a covenant not to compete is reasonable only if: it is no greater than is required for the protection of a legitimate business interest of the employer-promisee, it does not impose undue hardship on the employee-promisor, and it is not injurious to the public. Noncompete agreements must be supported by adequate consideration, which can include employment or continued employment for a "substantial period" after the agreement is signed. The Illinois state appellate courts have held that there must be at least two years or more of post-signature employment to constitute adequate consideration in support of noncompete agreements. This bright-line rule is maintained even if the employee resigns on his own instead of being terminated. Since the IL Supreme Court has yet to weigh in, there is a split in the Illinois federal district courts whether the 2-year

	bright-line rule applies.• *Citation: Reliable Fire Equip. Co. v. Arredondo*, 965 N.E. 2d 393 (Ill. 2011); *Fifield v. Premier Dealer Servs., Inc.,* 2013 IL App (1st) 120327 993 N.E.2d 938 (Ill. App. Ct. 1st Dist. 2013)(2-yr bright-line rule); *Diederich Ins. Agency, LLC v. Smith,* 2011 IL App (5th) 100048, 952 N.E.2d 165 (Ill. App. Ct. 5th Dist. 2011) (2-yr bright-line rule); *Prairie Rheumatology Assocs., S.C. v. Francis,* 2014 IL App (3d) 140338 (Ill. App. Ct. 3d Dist. 2014) (2-yr rule bright-line); *Technology, LLC v. DeFazio,* 40 F.Supp.3d 989 (N.D.Ill. 2014)(2-yr bright-line); *Montel Aetnastak, Inc. v. Miessen,* No. 13 C 3801, 998 F.Supp.2d 694, (N.D.Ill. Jan. 28, 2014)(no 2-yr bright-line rule; 15 months and voluntary resignation sufficient); *Bankers Life and Casualty Co. v. Miller,* Case No. 14-cv-3165 (N.D. Ill. Feb. 6, 2015)(no 2-yr bright-line rule); *Cumulus Radio Corp. v. Olson,* Case No. 15-cv-1067 (C.D. Ill. Feb. 13, 2015) (no 2-yr bright-line rule; 21 months and voluntary resignation sufficient)
IN	Noncompetes are enforceable if the employer has a protectable interest. Noncompetes must also be reasonable as to the time, geography, and scope of activity restricted. Enforceability is decided on the specific facts of each case, but some general guidelines have developed. Customer lists and information not available through industry or media sources generally will be considered confidential. Noncompetes that restrict an employee from competing with an employer within the geographic area or restrict an employee from competing with the employer regarding customers with whom the employee had contact generally will be viewed as reasonable. Noncompetes with a duration of two years or less usually are enforceable. Indiana courts follow the "blue pencil" rule whereby courts will strike provisions from a noncompete agreement, but will not rewrite or add provisions. The Indiana Supreme Court has held that the blacklisting law may not be used against employers who seek to enforce noncompete agreements.• *Citation: Loparex, LLC, v. MPI Release Technologies, LLC*, 964 N.E.2d 806 (Ind. 2012). *Sharvelle v. Magnante*, 836 N.E.2d 432 (Ind. Ct. App. 2005). *See also Gleeson v. Preferred Sourcing, LLC.* 883 N.E.2d 164 (Ind. Ct. App. 2008).
IA	Contracts restraining trade or commerce are prohibited. However, noncompetes are enforceable if they are no broader than what is reasonably necessary for the protection of the employer's business interests and they don't impose undue hardship on the employee. Also, enforceable noncompetes may not be prejudicial to the public interest. In assessing reasonableness, Iowa courts generally examine both time and area restrictions. Agreements prohibiting employees from entering a competing business after discharge are unreasonable if they're unlimited as to time or area. Iowa courts have generally found that a five-year time period is at the outer limits of what is enforceable. A noncompete that prohibited competition within a 100-mile radius of an employer's Iowa offices was held to be unreasonable when the employer had a relatively large number of offices in the state, resulting in a prohibition of competition in virtually the whole state.• *Citation:* Iowa Code 553.4; *Lamp v. American Prosthetics*, 379 N.W.2d 909, 910 (Iowa 1986); *Mutual Loan Co. v. Pierce*, 65 N.W.2d 405, 408 (Iowa 1954); *Uncle B's Bakery, Inc. v. O'Rourke*, 920 F. Supp. 1405, 1433 (N.D. Iowa 1996).
KS	Noncompetes must satisfy the general requirements for a contract, including offer, acceptance, and consideration. They also must be ancillary to valid contracts. Kansas has no strict limitations on time or geographic scope. Instead courts follow the doctrine of reasonableness, which balances the interests of the employer with those of the employee. In particular, courts often look at the following questions: (1) does the noncompete protect a legitimate business interest of the employer (the two primary interests are customer contacts and trade secrets); (2) does it create an undue burden on the employee; (3) does it injure the public welfare; and (4) are the restrictions on time and scope reasonable. • *Citation: Weber v. Tillman*, 259 Kan. 457, 913 P.2d 84 (1996).
KY	Noncompetes are enforceable if the covenants are "reasonable in scope and purpose." Reasonableness is to be determined generally "by the nature of the

	business or profession and employment, and the scope of the restrictions with respect to the charter, duration, and territorial extent." If a court determines that a provision is overly broad, it may blue pencil the agreement to create a reasonable restriction. Additionally, a noncompete agreement may be unenforceable against a terminated employee. Under Kentucky law, continued employment under the same terms as the employment agreement for several years is sufficient consideration for the continued employment to be subject to the original terms of employment, including noncompete.• *Citation: Petter Packaging, LLC v. Hutchcraft,* 2012 IL App (5th) 110020-U; *Orion Broadcasting, Inc. v. Forsythe*, 477 F. Supp. 198, 201 (W.D. Ky. 1979); *Hall v. Willard and Woolsey*, *P.S.C.,* 471 S.W.2d 316, 317-18 (Ky. 1971) (citing *Crowell v. Woodruff*, 245 S.W.2d 447, 449 (Ky. 1952); *Hammons v. Big Sandy Claims Service Inc.*, 567 S.W.2d 313, 315 (Ky. App. 1978) (citing *Ceresia v. Mitchell*, 242 S.W.2d 359, 362-64 (Ky. 1951).
LA	State law permits agreements that prohibit employees from carrying on, or working for, a business similar to their employer's or from soliciting the employer's customers for a period of up to two years following termination of employment in any parishes and/or municipalities in which the employer conducts business provided the parishes and/or municipalities are specified in the agreement. Choice of forum and choice of law clauses in noncompetes are unenforceable unless the choice of forum clause or choice of law clause is expressly, knowingly, and voluntarily agreed to and ratified by the employee after the occurrence of the incident that is the subject of the civil or administrative action. However, noncompete contracts cannot be entered into with, or applied to, vehicle sales personnel. A franchiser and its employee may enter into noncompete agreements under certain circumstances. State law permits noncompete agreements for corporations, partnerships, and limited liability companies.• *Citation:* La. Rev. Stat. Ann. §23:921.
ME	The Maine Law Court has stated that noncompetes are "contrary to public policy and will be enforced only to the extent that they are reasonable and sweep no wider than necessary to protect the business interests in issue." The court will only enforce a noncompete if it's reasonable, and the reasonableness "is a question of law that must be determined by the facts developed in each case as to its duration, geographic area, and the interests sought to be protected."• *Citation: Chapman & Drake v. Harrington*, 545 A.2d 645, 647 (Me. 1988) and *Brignull v. Albert*, 666 A.2d 82, 84 (Me. 1995).
MD	No statute addresses noncompetes, but they are construed to determine whether the restriction goes beyond that which is reasonably necessary to protect the interests of the employer, imposes an undue hardship on the employee, or is contrary to the public interest.• *Citation: Becker v. Bailey*, 299 A.2d 835 (Md. 1973) and *Fowler v. Printers II, Inc.*, 598 A.2d 794 (Md. 1991).
MI	Michigan enforces a rule of reasonableness with respect to duration, geography, and the type of employment or line of business.• *Citation:* MCL 445.774.
MN	Noncompetes are strictly construed against employers because they constitute a restraint on an employee's ability to earn a livelihood, but they will be enforced when they are supported by independent consideration and are "reasonable" in scope: geographic and temporal. Minnesota case law recognizes a distinction between new hires and existing employees with respect to executing noncompetes. Existing employees must be given independent consideration in exchange for executing a noncompete agreement. State courts will sometimes modify a noncompete to the extent its geographical and temporal restrictions are unreasonable, thus making it enforceable. Employers who hire individuals subject to a noncompete from a previous employer may face liability.• *Citation: See, e.g., Bennett v. Storz Broadcasting Co* ., 270 Minn. 525, 534, 134 N.W.2d 892, 899 (1965) (establishing a test for determining whether a noncompete clause should be enforced.)
MO	Missouri law is generally supportive of noncompete agreements. Such agreements are enforceable if they concern a protectable interest of the

	employer and are reasonable in time and geographic restrictions. Each case is determined on its own facts.
MT	Montana prohibits "any contract by which anyone is restrained from exercising a lawful profession, trade, or business of any kind." But the ban isn't absolute. A person who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business within certain areas so long as the buyer carries on a like business. The "certain area" language acts as a geographic restraint that limits the noncompete to the city and county where the principal office of the business is located; a city in any county adjacent to the county in which the principal office is located; any county adjacent to the county in which the principal office is located; or any combination of the above. Also, upon the dissolution of a partnership, partners may agree that one or more of them may not carry on a similar business within the areas outlined in the statute. Montana courts have enforced noncompetes that are reasonable in time and place and supported by adequate consideration.• *Citation:* Mont. Code Ann. §§28-2-703, 28-2-704, and 28-2-705. *Dobbins, DeGuire & Tucker v. Rutherford*, 218 Mont. 392, 708 P.2d 577 (1985). *Montana Mountain Products v. Curl*, 327 Mont. 7, 112 P.3d 979 (2005).
NE	Nebraska courts narrowly construe noncompete agreements. Any noncompete that seeks to do anything more than restrict former employees from working with clients or customers of the former employer with whom they had personal contact will be deemed unenforceable. The Nebraska Supreme Court has repeatedly held that it won't "blue pencil," or reform, unenforceable provisions. Therefore, if any portion of the language in a noncompete is unenforceable, the entire provision is null and void.• *Citation: Moore v. Eggers Consulting Co*., 252 Neb. 396, 562 N.W. 2d 534 (1997); *Vlasin v. Len Johnson & Co*., 235 Neb. 450, 455 N.W. 2d 772 (1990), and others.
NV	Courts will enforce legitimate agreements between employers and employees limiting an employee's right to compete against the employer after employment, but only reasonable restraints will be enforced, *i.e*., those restraints that impose no greater limits than those required to protect the business and goodwill of the employer. In assessing whether a noncompete is reasonable the courts routinely scrutinize the time and territorial limitations, as well as the type of activity restricted. Nevada has upheld small territorial limitations limited to the areas where the employer conducts business and the employee has relationships with the employer's customers. Nevada courts have been willing to modify noncompetes, eliminating grammatically severable, unreasonable provisions and rewriting portions of agreements to make them reasonable and enforceable. An employer in a corporate sale may not generally assign rights under an employee's covenant not to compete without the employee's consent and separate consideration. However, rule of nonassignability does not apply when a successor corporation acquires restrictive employment covenants as the result of a merger.• *Citation: Camco, Inc. v. Baker*, 113 Nev. 512, 936 P.2d 829 (1997); *Jones v. Deeter*, 112 Nev. 291, 913 P.2d 1272 (1996); *Hansen v. Edwards*, 83 Nev. 189, 426 P.2d 792 (1967); and *Traffic Control Servs. v. United Rental N.W., Inc*., 120 Nev. 168, 87 P.3d 1054 (2004), *HD Supply Facilities Maintenance, Ltd. v. Bymoen*, 210 P.3d 183 (June 11, 2009).
NH	Noncompete agreements are narrowly construed. Restraints on employment are allowed only if the restraint (1) is no greater than necessary for the protection of the employer's legitimate interest, (2) does not impose undue hardship on the employee, and (3) is not injurious to the public interest. Legitimate interests of an employer that may be protected from competition include: the employer's trade secrets; other confidential information, such as information regarding a unique business method; an employee's special influence over the employer's customers, developed during the course of employment; contacts developed during the employment; and the employer's development of goodwill and a positive image. Additionally, if an employee's position involves client contact, the employer has a legitimate interest in preventing the employee from appropriating goodwill that

	would otherwise be directed to the employer. Also, prior to or concurrent with making an offer of employment, every employer must provide a copy of any noncompete agreement that is part of the employment agreement to prospective employees, or else the contract will be void and unenforceable. This provision does not apply to changes in job classification.• *Citation: ACAS Acquisitions (Precitech), Inc. v. Hobert*, 155 N.H. 381 (2007); N.H. Rev. Stat. Ann. §275:70.
NJ	Noncompete agreements will be enforced if they are reasonable under all circumstances. A determination of what constitutes "reasonableness" generally requires an analysis of whether the noncompete (1) protects the legitimate interests of the employer; (2) imposes an undue hardship on the employee; and (3) is injurious to the public. The New Jersey Supreme Court has ruled that geographic and time restrictions that exceed the boundaries necessary to protect the employer may be modified by a court. New Jersey will not enforce noncompete agreements entered into by either an attorney or a psychiatrist.• *Citation: Whitmyer Bros. Inc. v. Doyle*, 58 N.J. 25 (1971); *Karlin v. Weinberg*, 77 N.J. 408 (1978); *Maw v. Advanced Clinical Commc'ns*, 179 N.J. 439 (2004); *Comprehensive Psychology Sys, P.C. v. Prince*, 375 N.J. Super. 273 (2005); *Groen, Laveson, Goldberg & Rubenstone v. Kancher*, 362 N.J. Super. 350 App. Div. (2003).
NM	Under New Mexico case law, noncompetes are valid and enforceable if supported by sufficient consideration, if they're related to a legitimate business purpose, and if the time and space restrictions are no broader than what is reasonably required for the business interests that the agreement is designed to protect. The validity of time and space restrictions is determined on a case-by-case basis.• *Citation: Bowen v. Carlsbad Insurance & Real Estate, Inc.*, 104 N.M. 514, 724 P.2d 223 (1986).
NY	Noncompetes are disfavored as a matter of public policy and are enforceable only to the extent that they satisfy the overriding requirement of reasonableness. Noncompetes will only be subject to specific enforcement to the extent that they are 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. Thus, noncompetes are enforceable to the extent necessary to prevent the disclosure or use of trade secrets or confidential customer information. The "Broadcast Employees Freedom to Work Act" bars Broadcast industry employers, including television, radio, cable, internet or satellite-based stations or networks and any entity affiliated with any such employers from requiring as a condition of employment that a broadcast employee or prospective broadcast employee refrain from obtaining employment in any specified geographic area, for a specific period of time, with any particular employer or in any particular industry. Broadcast employee means any on-air or off-air employee of a broadcasting industry employer, excluding management. The statute, however, does not apply to preventing enforcement of such a covenant during the term of employment. In addition, it provides for damages, including attorney's fees and costs, for violation of the statute.• *Citation: Morris v. Schroder Capital Mgm't, Inc.*, 7 N.Y. 3d 616 (2006); *Gilman v. Cioca, Inc.*, 55 A.D.3d 871 (2d Depít 2008); *Reed Roberts Assoc., Inc. v. Straumann*, 40 N.Y.2d 303, 307, 353 N.E.2d 590, 592, 386 N.Y.S.2d 677, 679 (1976) and *Greenwich Mills Co., Inc. v. Barrie House Co., Inc.*, 91 A.D.2d 398, 459 N.Y.S.2d 454 (2d Dep't 1983) and New York Labor Law §202-k.
NC	Noncompetes are required to be in writing. State courts use multiple factors under the common law to determine whether an agreement will be enforced; there is no statute. To be enforceable, a covenant must (1) be in writing, (2) be ancillary to a contract of employment or sale of a business, (3) be based on valuable consideration, (4) have a scope that is reasonably necessary for the protection of a legitimate business interest, and (5) be reasonable as to time and territory. Courts generally enforce one- or two-year restrictions provided they are reasonably restricted geographically. In the very limited circumstances of divisible territorial restrictions, a court may be capable of severing unenforceable restrictions from reasonable ones by blue-penciling and enforcing the reasonable restriction.• *Citation:* N.C. Gen. Stat. §75-4.

ND	Noncompete agreements are greatly restricted. They aren't allowed in typical employment situations and are limited to the sale of the goodwill of the business. Even when such sale is involved, noncompetes are limited to a specific county, city, or part of either.• *Citation:* N.D.C.C. §9-08-06.
OH	Ohio courts uphold noncompetes to the extent that they're necessary to protect an employer's legitimate interests, do not impose an undue hardship on an employee, and are not injurious to the public. If the restriction is overbroad in any respect (such as time, duration, geographic location, scope of work, client restrictions) such that it does not protect an employer's legitimate interests but instead seeks to prevent ordinary competition, a court will rewrite the agreement so that it reflects only what is reasonably necessary to protect the employer's legitimate interests. Factors to consider in determining whether the terms of a noncompetition agreement are reasonable to protect an employer's legitimate business interests include: "whether the employee represents the sole contact with the customers, whether the employee is possessed with confidential information or trade secrets, whether the covenant seeks to eliminate competition that would be unfair to the employer or merely seeks to eliminate ordinary competition, whether the covenant seeks to stifle the inherent skill and experience of the employee, whether the benefit to the employer is disproportional to the detriment to the employee, whether the covenant operates as a bar to the employee's sole means of support, whether the employee's talent the employer seeks to suppress was actually developed during the period of employment, and whether the forbidden employment is merely incidental to the main employment." Other special rules may apply. For example, continued employment is adequate consideration for a promise not to compete. Liquidated damages provisions may be used as a means of preventing unfair competition. There are similar rules with respect to properly assigning noncompetition agreements, including whether they assign through mergers or asset purchases of corporations, and also rules with respect to agreements as part of employment versus agreements as part of the sale of a business.• *Citation: Rogers v. Runfola & Assoc., Inc*., 57 Ohio St. 3d 5, 565 N.E. 2d 540 (Ohio 1991), *Raimond v. Van Vierah*, 42 Ohio St. 2d 21, 325 N.E.2d 544 (Ohio 1975), *Lake Land Emp't Group of Akron, LLC v. Columber*, 101 Ohio St. 3d 242, 804 N.E.2d 27. 2004-Ohio-786 (Ohio 2004); *Acordia of Ohio, L.L.C. v. Fishel,* 1133 Ohio St. 3d 356, 978 N.E.2d 823, 2012-Ohio-4648 (Ohio 2012).
OK	Noncompetition provisions in employment agreements are void and unenforceable except when involving the sale of a partnership or of goodwill. Reasonable non-solicitation agreements prohibiting the direct solicitation of established customers are permitted. State law expressly permits agreements that prohibit an employee or independent contractor from directly or indirectly soliciting employees or contractors to become employees for another organization.• *Citation:* 15 Okla. Stat. §§218, 219, 219A, and 219B.
OR	By statute, a noncompete agreement will not be enforceable unless: (1) the employee is given written notice at least two weeks before the first day of work that a noncompetition agreement is required or the noncompetition agreement is entered into upon a "subsequent bona fide advancement," (2) the employee is exempt from Oregon overtime and minimum wage law, (3) the employer has a "protectable interest" (such as trade secret or confidential business information that gives the employer a competitive advantage), and (4) the employee earns more than the median family income for a family of four, as determined by the most recent national census. Furthermore, the duration of the noncompetition agreement cannot exceed two years from the date of termination. An agreement not to solicit customers or employees is no longer considered a noncompete agreement under the statute.• *Citation:* ORS 653.295 and *Volt Servs. Group v. Adecco Employment Servs., Inc.*, 178 Or. App.

	121, 126, 35 P.3d 329, 333 (2001) (interpreting statutory requirements for enforcement of a noncompete agreement). *Eldridge v. Johnston*, 195 Or. 379, 403 245 P.2d 239, 250 (1951) (describing common law requirements for enforcement of any contract in restraint of trade).
PA	Noncompetes are enforceable if they are incident to an employment relationship between the parties, the restrictions are reasonably necessary to protect the employer, and the restrictions are reasonably limited in duration and geographic extent. There are no specific time or geographical restrictions.• *Citation: Hess v. Gebhard & Co*., 570 Pa. 148, 157, 808 A.2d 912, 917 (2002).
RI	In general, noncompetes will be upheld if they are (1) ancillary to an otherwise valid agreement (employment contract, sale of business), (2) supported by adequate consideration, and (3) protective of a legitimate interest. Time and geographic restrictions will be enforced to the extent that they are reasonably necessary to protect a legitimate proprietary interest.• *Citation: Durapin, Inc. v. American Products, Inc.*, 559 A.2d 1051, 1053 (R.I. 1989).
SC	South Carolina's common law governs noncompetes. Courts focus on the following restrictions: A noncompete generally is valid only if it is (1) necessary for the protection of the legitimate interest of the company; (2) reasonably limited with respect to time and place; (3) not unduly harsh and oppressive in curtailing the legitimate efforts of the employee to earn a livelihood; (4) reasonable from the standpoint of sound public policy; and (5) supported by valuable "consideration." Consideration means the benefit that a party receives for entering into a contract. Both parties must receive consideration of some kind for a contract to be legally binding. Courts closely scrutinize the durational and geographic limitations of noncompetes, which generally will be enforceable for periods of less than two years and only for geographic areas in which the particular employee actually worked or was tied to a particular customer base. Blue-penciling is not permitted in South Carolina.• *Citation: Poole v. Incentives Unlimited, Inc.*, 338 S.C. 271, 525 S.E.2d 898 (Ct. App. 1999), aff'd 345 S.C. 378, 548 S.E.2d 207 (2001) and *Stringer v. Herron*, 309 S.C. 529, 424 S.E.2d 547 (Ct. App. 1992); see also *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15 (2010) (blue-penciling).
SD	Noncompetes may be enforceable if an employee and employer agree at the time of employment or at any time during employment that the employee won't engage directly or indirectly in the same business or profession as that of the employer for any period not exceeding two years. Also, a noncompete can stipulate that the employee won't solicit existing customers of the employer within a specified county, city, or other specified area for any period not exceeding two years. The state supreme court has determined that if an employee quits or is fired for good cause and the agreement meets the requirements of the statute, no further finding is necessary. If an employee is fired for no fault of his own, the court needs to go further to determine whether the agreement is reasonable. To do that the trial court must engage in a balancing test of competing interests. • *Citation:* SDCL §53-9-11 and *Central Monitoring Service v. Zakinski*, 1996 SD 116, 553 NW2d 513.
TN	Noncompetes are generally enforceable if geographic and time restrictions are found to be reasonable under facts and circumstances of each case. Legislation passed in 2007 that becomes effective January 1, 2008, overturned prior case law, which restricted noncompetition agreements among health care providers. Now podiatrists, chiropractors, dentists, most medical doctors, ophthalmologists, and psychiatrists may enter into reasonable noncompetition agreements. Osteopathic physicians were also included by amendment, effective January 1, 2012. Agreements related to employment or other contractual relationships must be in writing and must be limited to 2 years or less and must either have a geographic scope limited to a 10-mile radius of the physician's primary practice location or the county in which the practice is located (whichever is larger) or must be limited to facilities where the employing or

	contracting entity provided services while the practitioner was employed or under contract. Previously, physicians who hade been employed by or under contract with a group for at least six years were exempt from some of these restrictions; however, the 2012 amendment eliminated these exemptions.• *Citation:* **Physician noncompetes:** Tenn. Code Ann. §63-1-148.
TX	Generally, noncompetes are enforceable if they are ancillary to or part of an otherwise enforceable agreement. Their limitations as to time, geography, and scope must be reasonable and not impose a greater restraint than necessary to protect the business. If an otherwise-valid noncompete has limitations that are deemed unreasonable or impose a greater restraint than necessary, a court must reform the agreement to make it enforceable.• *Citation:* Tex. Business & Commerce Code §§15.50 and 15.51.
UT	Utah courts examine noncompetes on a case-by-case basis. The Utah Supreme Court has issued guidance on when noncompetes will be enforced in a four-part test: (1) is the agreement supported by consideration, (2) did the parties negotiate terms in good faith, (3) is the agreement necessary to protect the goodwill of the business or other legitimate business other than the desire to limit competition, and (4) is the agreement reasonable in its restrictions on time and area.• *Citation: System Concepts, Inc. v. Dixon*, 669 P.2d 421 (Utah 1983); *Allen v. Rose Park Pharmacy*, 237 P.2d 823 (Utah 1951).
VT	Courts will enforce noncompete agreements that are reasonable in geographical scope, duration, and subject matters. What is reasonable under each of those categories is dependent on the nature of the work. The courts are protective of an individual's right and need to work, so an employer seeking to enforce a noncompete must establish the need to protect its interest and the fairness of doing so. The circumstances of the termination of employment and the nature of the business interest at stake also are relevant factors.• *Citation: Roy's Orthopedic v. Lavigne*, 142 Vt. 347, 454 A.2d 1242 (1982); *Dicks v. Jensen*, 172 Vt. 43, 768 A.2d 1279 (2001); *Omega Optical v. Chroma Tech. Corp.*, 174 Vt. 10, 800 A.2d 1064 (2002); *Summits 7, Inc. v. Kelly*, 2005 VT 97, 178 Vt. 396, 886 A.2d 365; *Systems and Software, Inc. v. Barnes*, 2005 VT 95, 178 Vt. 389, 886 A.2d 762.
VA	There is no Virginia statute addressing or limiting the effectiveness of noncompete agreements. Noncompetes and other restrictive covenants are evaluated on a case-by-case basis pursuant to the general principles that they will be enforced if narrowly drawn to protect no more than the employer's legitimate business interests, are not unduly burdensome on the restricted individual's ability to earn a living, and are not contrary to public policy. Use of form language from prior court rulings does not ensure enforcement since each case must be evaluated on its own merits. Noncompetes will be upheld only when an employee is prohibited from competing with a former employer directly or through a competitor. Where a restriction is not limited to positions not competitive with the employer, it will not be enforced. Virginia does not permit blue-penciling, so the scope of an overbroad agreement will not be narrowed, but, instead, will be declared totally unenforceable.• *Citation:* Illustrative recent decisions from the Virginia Supreme Court include *Parikh v. Family Care Ctr., Inc.*, 273 Va. 284 (2007) and *Omniplex World Services Corp. v. U.S. Investigations Svcs.*, 270 Va. 246 (2005); *Home Paramount Pest Control v. Shaffer*, 282 Va. 412, 415, 718 S.E. 2d 762, 763-64 (2011).
WA	No statute of general application governs the enforceability of noncompetes. Courts will enforce a noncompetition agreement that is necessary to protect the employer's legitimate protectable interests, is reasonable in scope or duration, and does not impose an undue hardship on the employee or the public. Legitimate protectable interests include confidential business information and customer relationships. When possible and when restrictions won't work an injustice to the parties or injure the public, courts will partially enforce or reword an otherwise overbroad agreement.

	Non-competition agreement must be supported by consideration independent of mere continued employment. On the related subject of assigning employee's rights in inventions, Washington law excludes certain inventions from invention assignment agreements and requires that invention assignment agreements include a notice to the employee regarding the kinds of inventions that are not assigned to the employer.• *Citation:* **Inventions:** Wash. Rev. Code §49.44.140.
WV	No West Virginia statute directly addresses noncompetes. The West Virginia Supreme Court of Appeals has held that noncompetes must be reasonable to be enforced. To determine if an agreement is reasonable, the court has applied a three-part inquiry: it must (1) not be greater than is required for the protection of the employer, (2) not impose an undue hardship on the employee, and (3) not be injurious to the public.• *Citation: Reddy v. Community Health Found. of Man*, 171 W. Va. 368, 374, 298 S.E.2d 906, 911 (1982).
WI	Wisconsin courts look with disfavor on noncompetes. Additionally, Wisconsin doesn't "blue pencil" overly broad or unreasonable agreements. In the past, if any part of the agreement was found to be unreasonable, the entire agreement was void. In *Star Direct, Inc. v. Dal Pra*, 2009 WI 76, the Wisconsin Supreme Court held that the existence of an unenforceable post-employment restrictive covenant does not render other, separate restrictive covenants contained in the same agreement as unenforceable, as long as the separate provisions may be understood and independently enforced. In considering the enforceability of a noncompete, state courts will consider the following factors: (1) the agreement must be necessary for the employer's protection; (2) it must provide a reasonable time period (normally no more than two years); (3) it must cover a reasonable territory; (4) it must not be unreasonable as to the employee; and (5) it must not be unreasonable as to the general public.• *Citation:* Wis. Stat. §103.465.
WY	Although Wyoming has recognized that employers may have a legitimate interest in protecting their trade secrets and confidential information, the court will impose a high burden on employers to prove the existence of that legitimate interest. State courts will enforce noncompetes provided the employer meets its burden of proving the reasonableness of the covenant. A valid and enforceable covenant not to compete requires a showing that the covenant is: (1) in writing; (2) part of a contract of employment; (3) based on reasonable consideration; (4) reasonable in durational and geographical limitations; and (5) not against public policy. To enforce a noncompete, an employer must show that the contract is fair, the covenants are reasonable as to duration and geographic territory, and that they are necessary to protect a legitimate business interest of the employer.• *Citation: Hopper v. All Pet Animal Clinic*, 861 P.2d 531 (Wyo. 1993); *CBM Geosolutions, Inc. v. Gas Sensing Tech. Corp.,* 215 P.3d 1054, 1059 (Wyo. 2009).