Judicial Review and Reformation of Noncompete Agreements

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For many companies, the departure of key employees presents a potential threat to the business. Such employees have knowledge and connections that enable them to damage their former employers by disclosing confidential information and becoming a competitor. In order to maintain a long-term, successful operation, employers must prevent these things from happening. The increasingly popular means to this end is to have employees sign noncompete agreements. But noncompete agreements (also called "noncompetes") are disfavored by many courts and are prone to legal attack. As a result, the enforceability of noncompetes is an important topic for employers. This article examines the various judicial approaches to noncompete agreements and provides a state-by-state survey of the rules concerning the enforceability of such agreements.

Overview of Noncompete Agreements

While there are many variations, most noncompete agreements have these three provisions: (1) the "noncompetition" provision, which prevents an employee from engaging in activities that may, or do, compete with the employer (e.g., working for a competitor or opening a competing business); (2) the "nonsolicitation" provision, which looks to restrict the employee from soliciting the company's other employees or customers; and (3) the "nondisclosure" or "confidentiality" provision, which seeks to limit an employee's unauthorized use of confidential, proprietary, or trade secret information.

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In the employment context, employers prefer to put a noncompete agreement in place in order to reduce the risk of economic harm to the company by attempting to limit employees from seeking new employment with a direct competitor or from disclosing certain trade secrets or other proprietary data of the company. The ultimate result may be that when an employee chooses to leave the company, the noncompete agreement may restrict his or her future employment, and it may outright prevent that employee from doing certain work for a specific time period.

Employers may be surprised to learn that these agreements may be unenforceable, at least as written. In fact, covenants not to compete are disfavored by most courts as against public policy, and are frequently reformed or found to be unenforceable altogether.[1] Noncompete agreements must be drafted with care in order to withstand judicial scrutiny.

Employers should not treat noncompete agreements as a uniform "one-size-fits-all" agreement wherein the same limitations and restrictions apply equally to all employees in all situations. The laws governing noncompete agreements vary from state to state, and each agreement should be evaluated individually, paying close attention to the circumstances of the business, the employees involved, and the laws of the state interpreting and enforcing the agreement.

Although there are many state-specific variations, most courts will look at the following factors in determining the validity of a noncompete agreement:

- ***Reasonableness.*** With regard to whether a noncompete agreement is reasonable, and thus one step closer to being valid, courts will look to see if the employer has a legitimate business interest in protecting the time, investment, and other resources that it has invested in employees. However, the interest must be balanced against the employee's right to pursue work elsewhere.[2] In crafting such agreements, it is important that the employer does not unduly limit an employee's other work opportunities. The employer bears the burden of proving that the agreement is narrowly tailored to protect its legitimate business interests so as to avoid forbidding an employee from working for another company in a way that is not competitive.[3] Any ambiguities in the contract will be construed in favor of the employee.
- ***Duration.*** In addition to being reasonable and providing consideration, a noncompete agreement must call for an employment restriction for a limited time. The duration of the agreement will be

evaluated on a case-by-case basis, but courts may look at factors such as the length of time it may take an employer to train another employee to take over the position being vacated. In general though, agreements containing a one- or two-year postemployment restriction are often found to be "reasonable," and those extending beyond that time period will be scrutinized more closely.[4]

- ***Geographic Scope.*** There is also a limitation as to distance. Noncompete agreements must be reasonable in their geographic scope. For instance, if an employer has a particular market area, courts may refuse to enforce agreements that extend beyond that market. As with the other restrictions mentioned herein (i.e., duration and activity), employers are encouraged to "narrowly tailor" the scope of these agreements to meet their protective needs and also ensure the greatest likelihood of enforcement by courts.[5]

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- ***Activity.*** Another reasonableness factor that is sometimes applied by courts is with regard to the scope of "activity" restriction. Courts may find a noncompete overbroad if it does not take into account the specific services provided by the employee to his former employer. Thus, a noncompete agreement that attempts to preclude an employee from working in a business area with which he was never associated at his former employment can be deemed too restrictive and unenforceable. As such, it is important for employers to draft noncompetes so they are specific as to the types of activity being restricted.[6]
- ***Independent Consideration.*** Many courts hold that a noncompete agreement contains sufficient consideration even if it is entered into at a time after an employment relationship begins. In that instance, the employment itself acts as the consideration. Some courts, on the other hand, will not enforce a noncompete unless the employee receives "independent" consideration—something of value, other than continued employment—in exchange for signing the agreement. For example, where a noncompete agreement is entered into after an employee's initial hire date, that agreement must be supported by a bona fide employment benefit, i.e., a promotion, a raise, stock options, etc. Without such consideration, some courts may deem an employer's promise of continued at-will employment as illusory and as insufficient consideration.[7]

To put it more succinctly, courts in most states will enforce a noncompete agreement only if it is (1) ancillary to an otherwise valid agreement or relationship (i.e., employment); (2) necessary to protect a legitimate interest of the employer (i.e., a trade secret, confidential information, or specialized training); and (3) reasonably limited in the temporal, geographic, and activity scope.

Judicial Approaches to Reviewing Noncompete Agreements

Although reasonableness, duration, distance, activity, and independent consideration provide guidelines to courts in determining the validity of noncompete agreements, they are only part of the process. Different states have adopted different approaches.

Reasonable Modification

The first judicial approach is the "reasonable modification" approach. Under this theory, courts may "rewrite" an agreement that is found to be overbroad. In so doing, the court must make a determination on the particular facts and attempt to limit the restrictions as necessary in order to protect an employer's legitimate business interests. The majority of states, including Illinois, Florida, New York, Ohio, Pennsylvania, Tennessee, and Texas, utilize this approach.

In Illinois, courts are allowed to rewrite overbroad provisions and enforce noncompetes as rewritten. As one Illinois court put it, "if the area covered by a restrictive covenant is found to be unreasonable as to area, it may be limited to an area which is reasonable in order to protect the proper interests of the employer and accomplish the purpose of the covenant."[8] Notwithstanding this authority, Illinois courts will reject the agreement altogether[9] and "refuse to modify [it] where the degree of unreasonableness renders it unfair."[10] Employers should take note that even courts in reasonable modification states may refuse to rewrite overbroad noncompete agreements if it appears that the employer overreached.

Florida has adopted a statute that authorizes courts to reform an overbroad restrictive covenant to the extent reasonably necessary in order to protect an employer's legitimate business interests.[11] In one Florida decision upholding the statute, it was held that the trial court acted within its discretion when it reduced the geographic limitation of a restrictive covenant in a physician's employment agreement from the entire county to within five miles north and south of one city at which the physician had worked.[12]

In a recent New York case, the court was faced with the issue of whether it should cure the unreasonable aspect of an overbroad employee restrictive covenant.[13] In its analysis, the court stated that "when . . . the unenforceable portion is not an essential part of the agreed exchange, a court should conduct a case specific analysis, focusing on the conduct of the employer in imposing the terms of the agreement."[14] Thus, partial enforcement

may be justified if the employer demonstrates an absence of overreaching, coercive use of dominant bargaining power, or other anticompetitive misconduct, but has in good faith sought to protect a legitimate business interest, consistent with reasonable standards of fair dealing.[15] The court stated that any fear that partial enforcement would require completely rewriting the parties' agreement was unfounded because no additional substantive terms were required, the time and geographical limitations on the covenant remained intact, and the only change was to narrow the class of clients to which the covenant applied.[16] Further, the court discredited other means of enforcing noncompete agreements, stating that to reject partial enforcement based solely on the extent of necessary revision of the contract resembled the doctrine that invalidation of an entire restrictive covenant was required unless the invalid portion was so divisible that it could be mechanically severed.[17]

Regardless of the application of the reasonable modification approach, not all states will proceed with modification where there is evidence of overreaching or bad faith by the employer.[18] Hence, even in those states where a court may modify overbroad provisions, it remains important for employers not to overreach.

Blue-Pencil Doctrine

Although the reasonable modification approach works for some, other states do not want to rewrite overbroad agreements. Rather, the courts of Alabama, Arizona, Colorado, Indiana, Minnesota, North Carolina, among several others, follow the "blue-pencil" rule. Under this theory, courts may simply strike from the agreement the provisions that are overbroad, and enforce everything else.[19]

In one Alabama case, for example, the state supreme court reversed an injunction issued against a former employee of a hair salon that prohibited her from working within a two-mile radius of any location of her former employer.[20] The court held that the restriction was unreasonably broad and imposed an undue hardship on the employee because the employer had more than 30 locations in the relevant area, making it impossible for the employee to find work as a hairdresser. The court remanded with instructions to blue-pencil the agreement in order to preclude competition within a two-mile radius of the *specific* location where the former employee actually worked.[21]

In a recent Indiana case, a podiatry clinic alleged that a former physician violated the noncompete agreement that indicated as many as fourteen counties in which the physician could not work if he left the clinic.[22] The clinic had offices in five different counties, and the physician had worked at three of those locations. After the physician left to take another job, he joined a new practice in one of the counties where the clinic had a location. In reviewing the clinic's claim for injunctive relief, the court held that the agreement only applied to the three counties in which the physician had worked, while the remaining eleven counties in the noncompete agreement were stricken.[23]

Arizona is another state that applies the blue-pencil doctrine. Arizona state courts have held that, although noncompete agreements are either reasonable and enforceable or unreasonable and unenforceable, "[i]f it is clear from its terms that a contract was intended to be severable, the court can enforce the lawful part and ignore the unlawful part."[24] As a result, Arizona courts may " 'blue-pencil' restrictive covenants, eliminating grammatically severable, unreasonable provisions."[25] However, Arizona courts will strictly scrutinize the geographic scope and duration restrictions and will enforce only those agreements where the "restraint does not exceed that reasonably necessary to protect the employer's business, is not unreasonably restrictive of the rights of the employee, does not contravene public policy, and is reasonable as to time and space."[26]

Employers should take note that even courts in reasonable modification states may refuse to rewrite overbroad noncompete agreements if it appears that the employer overreached.

On the other hand, employers in reasonable modification states get the potential benefit of a court rewriting an agreement in the event it is overbroad, employers in blue-pencil states do not have that luxury. Generally, any restraint beyond what is necessary to protect the employer's legitimate interests will be deemed unreasonable and will be stricken, provided the remainder of the agreement meets the reasonable standard. If the agreement cannot survive the striking of the overbroad clause, then the entire clause will be unenforceable. One way for the employer to combat this is to utilize alternative restraints (e.g., establish and articulate geographic scopes by radius, by city, and by county). Thus, employers can enable the court to strike overbroad clauses and enforce the remaining provisions.

No-Modification

Still other states, including Arkansas, Georgia, Nebraska, Virginia, and Wisconsin, follow a strict "no-modification" approach. This is essentially an all-or-nothing rule of enforceability, which prohibits the court from doing either of the above, while falling short of declaring all noncompetes as void as against public policy. Under this approach, a court may not rewrite overbroad provisions as done with the reasonable modification approach, nor

may it strike the provisions and enforce the remainder as the case is with the blue-pencil rule. Rather, a court employing the no-modification approach will strictly scrutinize the agreement, and if it is unreasonable as written, then the court will not enforce it at all.

In Georgia, for example, it has been held that "if one provision of a covenant-not-to-compete is found to be unenforceable, the entire covenant will be struck down."[27] In looking at a specific agreement, where it was held that the restriction failed to specify with any particularity the nature and kind of business that was to be competitive with the employer, and because the restriction failed to specify with particularity the nature of the business activities in which the employee was forbidden to engage, the covenant was held to be unreasonable.[28] The court held that "[i]t impose[d] a greater limitation on a franchisee than is necessary for the protection of the franchisor . . ." and that "[r]egardless of the level of scrutiny [applied], the lack of a territorial restriction renders [the covenant] unenforceable."[29] The restrictive covenant was thus struck down in its entirety as being vague and overbroad.

Whether governed by statute, case precedent, or even public policy, it is important that any noncompete agreement be narrowly tailored and customized to each employee.

In addition to Georgia, states like Wisconsin and Arkansas, in following the no-modification approach, will consider a number of factors to determine the reasonableness of a noncompete agreement. For instance, Wisconsin courts have held that covenants "must: (1) be necessary for the protection of the employer or principal; (2) provide a reasonable time restriction; (3) provide a reasonable territorial limit; (4) not be harsh or oppressive to the employee; and (5) not be contrary to public policy."[30] The Wisconsin legislature also has taken specific action regarding the enforcement of noncompete agreements by adopting the no-modification approach regarding unreasonable restraints. Thus, under this approach, if a portion of the covenant is unreasonable, the entire covenant is unenforceable.[31]

Courts in these states uphold noncompete agreements where the restrictive covenant is reasonable under the circumstances. In those states where a judicial theory for review or reformation has not yet been clearly established, employers would be best served drafting postemployment restrictions under the assumption that the court applies the no-modification approach and narrowly tailor each restriction.

Presumptively Void

The fourth and final approach to the judicial review of noncompete agreements is utilized in just two states. In California and North Dakota, courts generally will not enforce noncompetition provisions. Each state, by statute, has declared that such restrictive covenants are void as a matter of public policy as illegal restraints on trade.[32] In this regard, California has gone a step further by holding that an employer that merely asks its employee to sign a noncompete provision may expose itself to civil liability.[33] This is a perfect illustration of why it is important for an employer to be aware of a state's law on noncompete agreements.

Beyond the "noncompetition" portion of the agreement, California does seem to loosen its standards. Courts will enforce nonsolicitation and nondisclosure agreements, provided they are reasonable.[34] North Dakota, however, does not provide the same luxury to employers. North Dakota courts have held that nonsolicitation agreements, like noncompete covenants, are presumptively void.[35] Although no North Dakota court has specifically addressed nondisclosure agreements, it can be presumed that the same stance will apply.

Note the Laws of Your State

Noncompete agreements can be a very useful tool for companies to limit their employees from working for a competitor or from disclosing trade secrets or other proprietary data. However, it is crucial that employers be aware of their state's approach to enforcing or modifying the agreements.

Courts have sought to protect an employee's right to secure gainful employment, but they also have sought to protect the company from unfair competition arising from the employment relationship. Each noncompete agreement must be viewed on its own merits, and courts will make a determination weighing the facts and circumstances of the parties involved. It is important that employers take note of the laws of their state to determine the enforceability of a noncompete agreement and the judicial approach regarding its review and reformation in making it reasonable. As discussed above, and illustrated by the following survey, the law on the enforceability, validity, and modification of noncompete agreements varies from state to state. Whether governed by statute, case precedent, or even public policy, it is important that any noncompete agreement be narrowly tailored and customized to each employee.

State-by-State Survey of the Judicial Approaches to Noncompete Agreements

This state-by-state survey is based upon a review of case law within each state and its purpose is to provide an illustration of the judicial approach and general principles on the judicial review and potential reformation of noncompete agreements, which vary from state to state and are subject to change.

State/ Relevant Legal Authority	Judicial Approach/ General Common Law Principles Followed in Judicial Review
Alabama	**Blue-pencil rule**
Keystone Automotive Industries, Inc. v. Stevens, 854 So. 2d 113 (Ala. Civ. App. 2003); ALA. CODE § 8-1-1 (1975)	Alabama law disfavors contracts restraining employment, but its courts will enforce a covenant not to compete if employer has a protectable interest, and the restriction is reasonably related to that interest, is reasonable in time and place, and imposes no undue hardship on employee.[36]
King v. Head Start Family Hair Salons, Inc., 886 So. 2d 769 (Ala. 2004)	When an Alabama court determines that certain provisions of the noncompete agreement are unreasonable, it will apply the blue-pencil rule striking the overbroad parts, as long as the remaining portions are practical.[37]
Alaska	**Reasonable modification**
Data Management, Inc. v. Greene, 757 P.2d 62 (Alaska 1988)	The Alaska Supreme Court has held that an otherwise unreasonable restriction in a competition covenant will not automatically cause the covenant to be unenforceable, if such unreasonable term can be reasonably modified to render the covenant enforceable and the court should seek to do so, unless it should find that the covenant was drafted in bad faith.[38]
Arizona	**Blue-pencil rule**
Fearnow v. Ridenour, Swenson, Cleere & Evans, P.C., 138 P.3d 723 (Ariz. 2006)	Arizona courts have held that a contract restricting the right of an employee to compete with an employer after termination of employment that is not unreasonable in its limitations should be upheld in the absence of a showing of bad faith or of contravening public policy.[39] The reasonableness determination depends on the whole subject matter of the contract, the kind and character of the business, its location, the purpose to be accomplished by the restriction, and all the circumstances that show the intention of the parties.[40] The courts will not add terms or rewrite provisions but will eliminate unreasonable portions of a restrictive covenant by applying the blue-pencil rule.[41]
Arkansas	**No-modification**
Office Machines, Inc. v. Mitchell, 234 S.W.3d 906 (Ark. App. 2006)	Arkansas courts have held that, although a covenant not to compete is valid when founded on a valuable consideration, such agreements are not favored in the law and will be enforced only if the restraint imposed is reasonable as between the parties and not injurious to the public by reason of its effect upon trade.[42]
Statco Wireless, LLC v. Southwestern Bell Wireless, LLC, 95 S.W.3d 13 (Ark. App. 2003)	For a covenant not to compete 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 overbroad; and (3) a reasonable time limit must be imposed."[43]
Rector-Phillips-Morse, Inc., v. Vroman, 489 S.W.2d 1 (Ark. 1973)	When a covenant is too far-reaching, courts in Arkansas will not modify restrictions to make them reasonable.[44]
California	**Presumptively void**
Edwards v. Arthur Andersen LLP, 189 P.3d 285 (Cal. 2008); CAL. BUS. & PROF. CODE §§ 16600 *et seq*. (West 1941)	Covenants not to compete are generally void, and the statutory rule against such covenants is not subject to a "narrow-restraint" exception, as would permit contracts in restraint of trade that do not entirely bar a person from practicing his or her profession, trade, or business.[45]
Metro Traffic Control, Inc. v. Shadow Traffic Network, 27 Cal. Rptr. 2d 573 (Cal. App. 1994)	"California courts have consistently declared [§§ 16600 *et seq.*] an expression of public policy to ensure that citizens shall retain the right to pursue any lawful employment and enterprise of their choice."[46] As a result, California courts do not entertain arguments for the reasonable modification, blue-pencil, or no-modification approaches.

State/ Relevant Legal Authority	Judicial Approach/ General Common Law Principles Followed in Judicial Review
Colorado	**Blue-pencil rule**
Keller Corp. v. Kelley, 187 P.3d 1133 (Colo. App. 2008); COLO. REV. STAT. § 8-2-113 (1982)	Colorado public policy generally does not favor covenants not to compete, and even if the covenant is contained within one of the contracts authorized by statute, it still must be reasonable as to its territorial reach and its duration.[47]
Whittenberg v. Williams, 135 P.2d 228 (Colo. 1943); *National Graphics Co. v. Dilley*, 681 P.2d 546 (Colo. Ct. App. 1984)	If the restrictions on territory or duration are unreasonable, Colorado courts may choose whether to apply the blue-pencil rule or the no-modification approach in order to enforce the noncompete agreement.[48]
Connecticut	**Blue-pencil rule**
Deming v. Nationwide Mutual Insurance Co., 905 A.2d 623 (Conn. 2006)	Connecticut courts deal with unreasonable provisions by applying the blue-pencil rule "to the extent that a grammatically meaningful reasonable restriction remains after the words making the restriction unreasonable are stricken."[49]
Delaware	**Reasonable modification**
Pollard v. Autotote, Ltd., 852 F.2d 67 (3d Cir. 1988)	Delaware courts have tended to enforce covenants not to compete in employment contracts provided such covenants are reasonable with respect to geographical scope and duration and are deemed necessary to protect a legitimate business interest of the former employer.[50]
Knowles-Zeswitz Music, Inc. v. Cara, 260 A.2d 171 (Del. Ch. 1969)	Furthermore, Delaware courts have adopted the "reasonable alteration" approach, which means that the court may choose to enforce the agreement to the extent it is reasonable to do so.[51]
District of Columbia	**Unspecified**
Deutsch v. Barsky, 795 A.2d 669, 676 (D.C. 2002)	District of Columbia courts hold that a promise to refrain from competition that imposes a restraint that is ancillary to an otherwise valid transaction or relationship is an unreasonable restraint of trade if "(1) the restraint is greater than is needed to protect the promisee's legitimate interest, or (2) the promisee's need is outweighed by the hardship to the promisor and the likely injury to the public."[52]
Florida	**Reasonable modification**
Globe Data Systems v. Johnson, 745 So. 2d 1101 (Fla. App. 1999); FLA. STAT. ANN. § 542.33 (1997)	In determining whether a noncompetition agreement is enforceable, employee's interest in freely offering his or her industry, skills, and talents through marketplace competition must be balanced against the equally important rights to contract freely and to enforce freely bargained-for contractual duties.[53]
Health Care Financial Enterprises, Inc. v. Levy, 715 So. 2d 341 (Fla. App. 1998)	A Florida court may not refuse to enforce noncompetition agreement solely because the geographical area is unreasonable, but rather *must* modify an unreasonable restriction and enforce the agreement as modified.[54]
Georgia	**No-modification**
Avion Systems, Inc. v. Thompson, 2008 WL 2854300 (Ga. App. 2008)	Covenants against competition in employment agreements are in partial restraint of trade and are thus upheld only when strictly limited: The restrictions must be reasonable, considering the business interests of the employer needing protection and the effect of the restrictions on the employee.[55]
Atlanta Bread Co. Int'l, Inc. v. Lupton-Smith, 663 S.E.2d 743 (Ga. App. 2008)	With regard to unreasonable provisions in a noncompete agreement, Georgia courts apply the no-modification approach. That means, "if one provision of a covenant not to compete is found to be unenforceable, the entire covenant will be struck down."[56]

State/ Relevant Legal Authority	Judicial Approach/ General Common Law Principles Followed in Judicial Review
Hawaii	**Unspecified**
7's Enterprises, Inc. v. Del Rosario, 143 P.3d 23 (Haw. 2006)	Courts will find a noncompetition provision unreasonable if it is greater than required for the protection of the person for whose benefit it is imposed; it imposes undue hardship on the person restricted; or its benefit to the covenantee is outweighed by injury to the public.[57]
HAW. REV. STAT. § 480-4(c)(4) (1984)	Additionally, Hawaii statutes provide that covenants not to compete in employment contracts are enforceable if such covenants are reasonable with respect to duration and geographical scope and protect the legitimate business interest of the former employee and if, by such enforcement of the covenant, the employee does not suffer an unreasonable and undue hardship.[58]
Idaho	**Blue-pencil rule**
Bybee v. Isaac, 178 P.3d 616 (Idaho 2008)	Idaho courts hold that covenants not to compete are valid when they are reasonable as applied to the employer, the employee, and the general public.[59] In the employment context, noncompete covenants should expressly limit the scope of activities the employee is prohibited from performing.[60] Effective July 1, 2008, Idaho enacted a new noncompete law that codified much of the common law concerning the requirements of reasonableness, but also identified several "legitimate business interests" that an employer may assert in seeking to enforce a noncompete clause. One significant change in the law is that a noncompete term cannot exceed 18 months from the date of termination, unless an employer specifically gives extra consideration to an employee to sit out longer. In addition, the employer is granted some presumptions of reasonableness if the term is 18 months or less, and if the geographic area of restriction is confined to where the individual "provided services or had a significant presence or influence." Finally, courts must modify agreements that are overbroad.
Illinois	**Reasonable modification**
Cambridge Engineering, Inc. v. Mercury Partners 90 BI, Inc., 879 N.E.2d 512 (Ill. App. 2007)	Illinois courts hold that relevant considerations in determining the enforceability of a postemployment restrictive covenant not to compete include the hardship caused to the employee, the effect upon the general public, and the scope of the restrictions; this requires the courts to consider the propriety of the restrictions in terms of their length in time, their territorial scope, and the activities that they restrict.[61]
Eichmann v. National Hospital and Health Care Services, Inc., 719 N.E.2d 1141 (Ill. App. 1999)	Where a covenant is overbroad, Illinois courts may modify the restrictive covenant using the reasonable-modification approach. It must be noted, however, that Illinois courts "should refuse to modify an unreasonable restrictive covenant, not merely because it is unreasonable, but where the degree of unreasonableness renders it unfair."[62]
Indiana	**Blue-pencil rule**
Gleeson v. Preferred Sourcing LLC, 883 N.E.2d 164 (Ind. App. 2008); *Central Indiana Podiatry, P.C. v. Krueger*, 882 N.E.2d 723 (Ind. 2008)	Indiana courts generally will enforce covenants not to compete in employment contracts as long as such covenants are reasonable with respect to time, activity, and geographic area restrictions and protect a legitimate business interest of the former employer, and an employer's continuation of the employee's employment and the payment of wages to the employee provides sufficient consideration to the employees to support the employee's noncompetition covenant.[63] However, if some parts of the covenant are unreasonable, and the covenant is clearly divisible, Indiana courts will apply the blue-pencil rule "striking the unreasonable provisions from the covenant" to enforce the reasonable parts.[64]

State/ Relevant Legal Authority	Judicial Approach/ General Common Law Principles Followed in Judicial Review
Iowa	**Unspecified**
Thrasher v. Grip-Tite Manufacturing Co., Inc., 535 F. Supp. 2d 937 (S.D. Iowa 2008)	Under Iowa law, there is no public policy or rule of law that condemns or holds in disfavor a fair and reasonable noncompete agreement; such a contract is entitled to the same reasonable construction accorded to business obligations in general.[65] The court held that there are three factors to consider in determining the validity of a noncompete agreement: "(1) Is the restriction reasonably necessary for the protection of the employer's business; (2) is it unreasonably restrictive of the employee's rights; and (3) is it prejudicial to the public interest?"[66]
Kansas	**Unspecified**
Wichita Clinic, P.A. v. Louis, 185 P.3d 946, 951 (Kan. App. 2008)	Kansas courts have held that in determining the reasonableness of a covenant not to compete, four factors are generally considered: "(1) Does the covenant protect a legitimate business interest of the employer? (2) Does the covenant create an undue burden on the employee? (3) Is the covenant injurious to the public welfare? (4) Are the time and territorial limitations contained in the covenant reasonable?"[67]
Kentucky	**Reasonable modification**
Zurich Insurance Co. v. Mitchell, 712 S.W.2d 340 (Ky. 1986)	Kentucky courts generally will enforce covenants not to compete against former employees if the restrictive language is reasonable with respect to duration and geographical scope and is necessary to protect the legitimate business interests of the employer and, provided further, such covenant does not impose an undue hardship on the former employee or the general public.[68]
Air Relief, Inc. v. Centrifugal Technologies, Inc., 2008 WL 4755098, at *1 (Ky. App. 2008)	If noncompete provisions are overbroad, Kentucky courts will reform or modify the unreasonable or restrictive covenants using the reasonable-modification approach.[69]
Louisiana	**No-modification**
Bell v. Rimkus Consulting Group, Inc. of Louisiana, 983 So. 2d 927 (La. App. 2008); LA. REV. STAT. § 23:921 (2008)	Louisiana has a long-standing public policy to prohibit or severely restrict noncompetition provisions that curtail an employee's right to earn his livelihood.[70] An employment agreement limiting competition must strictly comply with the statutory requirements.[71]
Summit Institute for Pulmonary Medicine and Rehabilitation, Inc. v. Prouty, 691 So. 2d 1384 (La. App. 1997)	If a noncompete agreement does not comply with the statute, Louisiana courts will apply the no-modification approach and void the entire covenant.[72]
Maine	**Unspecified**
Bernier v. Merrill Air Engineers, 770 A.2d 97 (Me. 2001)	Under Maine law, an employer can prevent a former employee from using his trade or business secrets, and other confidential knowledge gained in the course of the employment, and from enticing away customers, but to be enforceable, such a restrictive covenant must be reasonable and must impose no undue hardship upon the employee and be no wider in its scope than is reasonably necessary for the protection of the business of the employer.[73]

State/ Relevant Legal Authority	Judicial Approach/ General Common Law Principles Followed in Judicial Review
Maryland	**Blue-pencil rule**
Ecology Services, Inc. v. Clym Environmental Services, LLC, 952 A.2d 999 (Md. App. 2008)	When a covenant not to compete is reasonable on its face as to both time and space, the factors for determining the enforceability of the covenant based upon the facts and circumstances of the case are whether the person sought to be enjoined is an unskilled worker whose services are not unique; whether the covenant is necessary to prevent the solicitation of customers or the use of trade secrets, assigned routes, or private customer lists; whether there is any exploitation of personal contacts between the employee and customer; and whether enforcement of the clause would impose an undue hardship on the employee or disregard the interests of the public.[74]
Holloway v. Faw, Casson & Co., 572 A.2d 510 (Md. 1990)	Maryland courts, however, may elect to use the blue-pencil rule and textually sever unreasonable provisions from the noncompete agreement.[75]
Massachusetts	**Unspecified**
Boulanger v. Dunkin' Donuts Inc., 815 N.E.2d 572 (Mass. 2004)	In Massachusetts, covenants not to compete are valid if they are reasonable in light of the facts in each case, and courts will only enforce such covenants where it is necessary to protect a legitimate business interest, reasonably limited in time and space, and consonant with the public interest.[76] A recent bill was filed that would render void and unenforceable "any written or oral contract or agreement arising out of an employment relationship that prohibits, impairs, restrains, restricts, or places any condition on, a person's ability to seek, engage in or accept any type of employment or independent contractor work, for any period of time after an employment relationship has ended."
Michigan	**Unspecified**
Coates v. Bastian Brothers, Inc., 741 N.W.2d 539 (Mich. App. 2007); MICH. COMP. LAWS ANN. § 445.774a(1) (West 1987)	As a general matter, Michigan courts presume the legality, validity, and enforceability of contracts, but noncompetition agreements between employers and employees are disfavored as restraints on commerce and are only enforceable to the extent they are reasonable.[77]
St. Clair Medical, P.C. v. Borgiel, 715 N.W.2d 914, 918 (Mich. Ct. App. 2006)	If a noncompete agreement is unreasonable, Michigan courts "may limit the agreement in order to render it reasonable in light of the circumstances in which it was made and specifically enforce the agreement as limited."[78]
Minnesota	**Blue-pencil rule**
Kallok v. Medtronic, Inc., 573 N.W.2d 356 (Minn. 1998)	In Minnesota, employment noncompete agreements are looked upon with disfavor, cautiously considered, and carefully scrutinized, but courts will enforce them if they serve a legitimate employer interest and are not broader than necessary to protect this interest.[79] In determining whether to enforce such agreements, courts will balance the employer's interest in protection from unfair competition against the employee's right to earn a livelihood.[80]
Hilligross v. Cargill, Inc., 649 N.W.2d 142 (Minn. 2002)	The blue-pencil rule has been adopted by Minnesota courts.[81] Therefore, a court may, in its discretion, "modify unreasonable restrictions on competition in employment agreements by enforcing them to the extent reasonable."[82]

State/ Relevant Legal Authority	Judicial Approach/ General Common Law Principles Followed in Judicial Review
Mississippi	**Unspecified**
Cain v. Cain, 967 So. 2d 654 (Miss. App. 2007)	Mississippi courts will uphold a restrictive covenant in restraint of trade only if it is reasonable, and to determine the validity of such a covenant, the court will look to the respective rights of the employer, the employee, and the public.[83]
Missouri	**Reasonable modification**
Healthcare Services of the Ozarks, Inc. v. Copeland, 198 S.W.3d 604 (Mo. 2006)	Missouri courts typically will enforce noncompete agreements so long as they are reasonable, and in practical terms, a noncompete agreement is reasonable if it is no more restrictive than is necessary to protect the legitimate interests of the employer.[84]
Mid-States Paint & Chemical Co. v. Herr, 746 S.W.2d 613, 616 (Mo. Ct. App. 1988)	If a Missouri court determines that a restriction is unreasonable, the contract may be modified and subsequently enforced if the court applies the reasonable-modification approach.[85]
Montana	**Blue-pencil rule**
Access Organics, Inc. v. Hernandez, 175 P.3d 899, 902 (Mont. 2008); MONT. CODE ANN. § 28-2-703 (1947)	Montana courts hold that contracts in restraint of trade are disfavored, but To be upheld as reasonable, a covenant not to compete must meet three requirements: (1) it must be partial or restricted in its operation in respect either to time or place; (2) it must be on some good consideration; and (3) it must be reasonable, that is, it should afford only a fair protection to the interests of the party in whose favor it is made, and must not be so large in its operation as to interfere with the interests of the public.[86]
Dumont v. Tucker, 822 P.2d 96 (Mont. 1991)	Where provisions are unreasonable, courts have the authority to limit the noncompete agreement by applying the blue-pencil rule rather than void the covenant entirely.[87] For example, a Montana court has limited the geographical region in order to enforce the rest of the provisions.[88]
Nebraska	**No-modification**
Thrasher v. Grip-Tite Manufacturing Co., Inc., 535 F. Supp. 2d 937 (S.D. Iowa 2008)	Under Nebraska law, to determine whether a covenant not to compete is valid, a court must determine whether a restriction is reasonable in the sense that it is not injurious to the public, that it is not greater than is reasonably necessary to protect the employer in some legitimate interest, and that it is not unduly harsh and oppressive on the employee.[89] Further, a noncompete clause that is aimed at preventing a former employee from unfairly appropriating the customer goodwill that properly belongs to the employer is not valid unless it restricts the former employee from working for or soliciting the former employer's clients or accounts with whom the former employee actually did business and has personal contact.[90] If the challenged noncompete provision fails to meet this standard, a Nebraska court is not empowered to modify or reform the noncompete clause to make it enforceable, apparently despite the specific incorporation of a reformation provision in the agreement of the parties.[91] Accordingly, Nebraska courts follow the no-modification approach.
Nevada	**Unspecified**
Sheehan & Sheehan v. Nelson Malley and Co., 117 P.3d 219 (Nev. 2005).	Nevada courts generally hold that covenants not to compete are enforceable only if they are reasonable in duration and geographical and territorial scope and are necessary to protect the legitimate business and operational needs of the employer.[92]

State/ Relevant Legal Authority	Judicial Approach/ General Common Law Principles Followed in Judicial Review
New Hampshire	**Unspecified**
ACAS Acquisitions (Precitech) Inc. v. Hobert, 923 A.2d 1076 (N.H. 2007).	New Hampshire courts hold that covenants that restrict trade or competition are valid and enforceable if the restraint is reasonable, given the particular circumstances of the case.[93] To determine whether a restrictive covenant ancillary to an employment contract is reasonable, the supreme court engages in a three-part inquiry to determine "first, whether the restriction is greater than necessary to protect the legitimate interests of the employer; second, whether the restriction imposes an undue hardship upon the employee; and third, whether the restriction is injurious to the public interest."[94]
New Jersey	**Blue-pencil rule**
The Community Hospital Group, Inc. v. More, 869 A.2d 884 (N.J. 2005)	New Jersey courts have held that the test for determining whether a noncompete agreement is unreasonable and thus unenforceable requires the court to determine "whether (1) the restrictive covenant was necessary to protect the employer's legitimate interests in enforcement, (2) whether it would cause undue hardship to the employee, and (3) whether it would be injurious to the public."[95]
Coskey's Television & Radio Sales and Service, Inc. v. Foti, 602 A.2d 789 (N.J. App. 1992)	Depending upon the results of this analysis, the restrictive covenant may be disregarded or given complete or partial enforcement to the extent reasonable under the circumstances. Furthermore, New Jersey courts apply the blue-pencil rule with regard to unreasonable or overbroad provisions. For example, "[e]ven if the covenant is found enforceable, it may be limited in its application concerning its geographical area, its period of enforceability, and its scope of activity" when the blue-pencil rule is applied.[96]
New Mexico	**Unspecified**
Danzer v. Professional Insurers, 679 P.2d 1276 (N.M. 1984).	New Mexico courts generally will enforce covenants not to compete in employment contracts if such covenants are reasonable in duration and geographical scope.[97]
New York	**Blue-pencil rule**
Ricca v. Ouzounian, 859 N.Y.S.2d 238 (N.Y. App. 2008)	New York courts have held that covenants not to compete in employment contracts will be enforced if reasonably limited as to time, geographic area, and scope; are necessary to protect the employer's interests; are not harmful to the public; and are not unduly burdensome.[98] Regarding unreasonable provisions, New York courts rejected the mechanical blue-pencil rule in favor of the reasonable-modification approach.[99]
North Carolina	**Blue-pencil rule**
Kinesis Advertising, Inc. v. Hill, 652 S.E.2d 284 (N.C. App. 2007)	North Carolina courts hold that a valid and enforceable covenant not to compete must be "(1) in writing; (2) made a part of the employment contract; (3) based on valuable consideration; (4) reasonable as to time and territory; and (5) designed to protect a legitimate business interest of the employer."[100]
Hartman v. W.H. Odell and Associates, Inc., 450 S.E.2d 912 (N.C. App. 1994)	When a covenant is overbroad, North Carolina courts may apply the blue-pencil rule and "choose not to enforce a distinctly separable part of a covenant in order to render the provision reasonable."[101]

State/ Relevant Legal Authority	Judicial Approach/ General Common Law Principles Followed in Judicial Review
North Dakota	**Presumptively void**
N.D. CENT. CODE § 9-08-06 (1943)	North Dakota law forbids an agreement that restrains or attempts to restrain the exercise of a lawful profession, trade, or business unless such contractual restriction is made in connection with the sale of a business or the dissolution of a partnership.[102] Therefore, even if a noncompete provision is reasonable, the entire covenant is void.
Ohio	**Reasonable modification**
Brakefire, Inc. v. Overbeck, 878 N.E.2d 84 (Ohio. Com. Pl. 2007)	Ohio courts have held that a covenant not to compete is reasonable if the restraint is no greater than is required for the protection of the employer, does not impose undue hardship on the employee, and is not injurious to the public.[103] Among factors to be considered, regarding reasonableness of the covenant not to compete, are: (1) The absence or presence of limitations as to time and space; (2) whether employee represents sole contact with customer; (3) whether employee is possessed with confidential information or trade secrets; (4) whether covenant seeks to eliminate unfair competition or merely seeks to eliminate ordinary competition; (5) whether covenant seeks to stifle inherent skill and experience of employee; (6) whether benefit to employer is disproportional to detriment to employee; (7) whether covenant operates as bar to employee's sole means of support; (8) whether employee's talent which employer seeks to suppress was developed during period of employment; and (9) whether forbidden employment is merely incidental to main employment.[104]
Bobcat Enterprises, Inc. v. Duwell, 587 N.E.2d 905, 906 (Ohio Ct. App. 1990)	When considering unreasonable noncompete agreements, Ohio courts, prior to 1975, applied the blue-pencil rule, "which allowed unreasonable contractual provisions to be stricken from an employment contract."[105]
Life Line Screening of America, Ltd. v. Calger, 881 N.E.2d 932 (Ohio Com. Pl. 2006)	Since 1975, however, Ohio courts have followed a "reasonableness" standard, otherwise known as the reasonable-modification approach. Where a court finds a noncompete agreement to be unreasonable, the court is empowered to reform the agreement so that it is reasonable.[106]
Oklahoma	**No-modification**
Loewen Group Acquisition Corp. v. Matthews, 12 P.3d 977 (Okla. Civ. App. 2000); OKLA. STAT. ANN. tit. 15, § 217 (West 2001)	A restraint on the free exercise of a profession, trade, or business is deemed reasonable only if it "(1) is no greater than is required for the employer's protection from unfair competition; (2) does not impose undue hardship on the employee; and (3) is not injurious to the public."[107]
Bayly, Martin, & Fay, Inc. v. Pickard, 780 P.2d 1168, 1172–73 (Okla. 1989)	Where certain essential contractual terms render a covenant not to compete unreasonable, Oklahoma courts may not modify the clause.[108] In other words, these courts apply the no-modification approach and void the entire noncompete paragraph.
Oregon	**Unspecified**
Or. Rev. Stat. § 653.295	Oregon law makes a noncompetition agreement between an employer and employee unenforceable unless such a restrictive covenant is agreed to at the inception of the employment relationship.[109]
Volt Services Group, Div. of Volt Mgmt. Corp. v. Adecco Employment Services, Inc., 35 P.3d 329 (Or. App. 2001)	Three things are essential to the validity of a contract in restraint of trade: (1) [I]t must be partial or restricted in its operation in respect either to time or place; (2) it must come on good consideration; and (3) it must be reasonable, that is, it should afford only a fair protection to the interests of the party in whose favor it is made, and must not be so large in its operation as to interfere with the interests of the public.[110]

State/ Relevant Legal Authority	Judicial Approach/ General Common Law Principles Followed in Judicial Review
Pennsylvania	**Blue-pencil rule**
WellSpan Health v. Bayliss, 869 A.2d 990 (Pa. Super. 2005)	Pennsylvania courts have held that a postemployment covenant that merely seeks to eliminate competition per se to give the employer an economic advantage is generally not enforceable.[111] If the threshold requirement of a protectable business interest is met, the next step in analysis of a noncompetition covenant is to apply the balancing test: "[f]irst, the court balances the employer's protectable business interest against the employee's interest in earning a living. Then, the court balances the employer and employee interests with the interests of the public."[112]
Hess v. Gebhard & Co., Inc., 808 A.2d 912 (Pa. 2002)	However, courts will apply the "blue line" rule and remove unreasonable terms where a "covenant imposes restrictions broader than necessary to protect the employer."[113]
Rhode Island	**Reasonable modification**
Cranston Print Works Co. v. Pothier, 848 A.2d 213 (R.I. 2004)	Rhode Island courts will uphold and enforce noncompete provisions if the party seeking to enforce the clause shows that the provision is ancillary to an otherwise valid transaction or relationship and that the contract is reasonable and does not extend beyond what is apparently necessary for the protection of those in whose favor it runs.[114]
Durapin, Inc. v. American Products, Inc., 559 A.2d 1051 (R.I. 1989)	After discussing the pros and cons of each approach, Rhode Island courts adopted the reasonable-modification approach.[115]
South Carolina	**Blue-pencil rule**
Poole v. Incentives Unlimited, Inc., 548 S.E.2d 207 (S.C. 2001)	South Carolina courts have held that a covenant not to compete is enforceable if it is not detrimental to the public interest, is reasonably limited as to time and territory, and is supported by valuable consideration.[116]
Eastern Business Forms, Inc. v. Kistler, 189 S.E.2d 22 (S.C. 1972)	When restraints in the noncompete agreement are excessive, however, South Carolina courts will apply the blue-pencil rule if those terms are severable. The "new" provision will then be enforced. If the terms are not severable, the entire covenant is struck down.[117]
South Dakota	**No-modification**
Hot Stuff Foods, LLC v. Mean Gene's Enterprises, Inc., 468 F. Supp. 2d 1078 (D.S.D. 2006); S.D. CODIFIED LAWS § 53-9-11 (1984)	Although the South Dakota statute governing covenants not to compete generally allows employers and employees to make their agreements without making a further showing of reasonableness, for those employees who are fired through no fault of their own, the trial court must balance the competing interests of the former employee, the employer, and the public to determine whether the noncompete agreement is reasonable.[118]
American Rim & Brake, Inc. v. Zoellner, 382 N.W.2d 421 (S.D. 1986)	When a noncompetition clause exceeds the limitations mandated by statute, however, South Dakota courts apply the no-modification approach and void the entire covenant not to compete.[119] If the provisions comply with the statute, they are deemed reasonable.

State/ Relevant Legal Authority	Judicial Approach/ General Common Law Principles Followed in Judicial Review
Tennessee	**Reasonable modification**
Murfreesboro Medical Clinic, P.A. v. Udom, 166 S.W.3d 674 (Tenn. 2005)	Tennessee courts have held that noncompete covenants are viewed as a restraint of trade and, as such, are construed strictly in favor of the employee.[120] Factors relevant to whether a noncompete covenant is reasonable include: (1) [T]he consideration supporting the covenant; (2) the threatened danger to the employer in the absence of the covenant; (3) the economic hardship imposed on the employee by the covenant; and (4) whether the covenant is inimical to the public interest.[121]
Central Adjustment Bureau, Inc. v. Ingram, 678 S.W.2d 28, 37 (Tenn. 1984)	Tennessee courts apply the reasonable-modification approach when a portion of the covenant is unreasonable.[122] Unless the circumstances indicate bad faith, courts will modify the unreasonable provision to make it enforceable. These courts, however, will not create brand new contracts for the parties.[123]
Texas	**Reasonable modification**
Light v. Centel Cellular Co., 883 S.W.2d 642 (Tex. 1994)	Texas courts generally uphold covenants not to compete in employment agreements whenever such agreements are reasonable in duration and geographical scope and necessary to protect the employer's legitimate business interests.[124] However, there are several hurdles in overcoming reasonableness that employers must strictly comply with, namely, that (1) the agreement is ancillary to or part of an otherwise enforceable agreement at the time the agreement is made and (2) the agreement must be reasonably limited as to time, geographical area, and scope so that it does not impose a greater restraint than is necessary to protect a legitimate business interest of the employer.[125]
Strickland v. Medtronic, Inc., 97 S.W.3d 835 (Tex. App. 2003)	Further, the only consideration that an employer may give to support a noncompete agreement is the confidential information the employee needs to do his or her job.[126]
Evan's World Travel, Inc. v. Adams, 978 S.W.2d 225 (Tex. App. 1993)	In modifying restrictive employment covenants, courts will closely examine the facts of a case and draft enforceable duration, territory, and scope-of-activity restrictions if those to which the parties agreed are overbroad or nonexistent.[127] In other words, Texas utilizes the reasonable-modification approach.
Utah	**No-modification**
Systems Concepts, Inc. v. Dixon, 669 P.2d 421 (Utah 1983)	Utah courts generally will uphold a covenant not to compete in an employment agreement if reasonable in duration and geographical area and necessary to protect the business interest of the former employer.[128]
Robbins v. Finlay, 645 P.2d 623 (Utah 1982)	Where a covenant not to compete is unreasonable, Utah courts apply the no-modification approach and the entire covenant is deemed unenforceable.[129]

State/ Relevant Legal Authority	Judicial Approach/ General Common Law Principles Followed in Judicial Review
Vermont	**Blue-pencil rule**
Systems and Software, Inc. v. Barnes, 886 A.2d 762 (Vt. 2005)	Vermont courts will enforce noncompetition agreements unless the agreement is found to be contrary to public policy, unnecessary for protection of the employer, or unnecessarily restrictive of the rights of the employee, with due regard being given to the subject matter of the contract and the circumstances and conditions under which it is to be performed.[130]
Summits 7, Inc. v. Kelly, 886 A.2d 365 (Vt. 2005)	When a covenant includes an unreasonable provision, however, Vermont courts will enforce the remaining portions of the restrictive covenant to the extent they are reasonable.[131] In other words, Vermont adheres to the blue-pencil rule.
Virginia	**No-modification**
Parikh v. Family Care Center, Inc., 641 S.E.2d 98 (Va. 2007)	Virginia courts hold that a covenant not to compete between an employer and an employee will be enforced if the covenant is narrowly written to protect the employer's legitimate business interest, is not unduly burdensome on the employee's ability to earn a living, and does not violate public policy.[132]
Better Living Components, Inc. v. Coleman, 2005 WL 771592 (Va. Cir. Ct. 2005)	Virginia courts have not expressly adopted the blue-pencil rule, and have expressly stated that "it is clear that the Court does not consider the possibility of reforming unreasonable restraints on trade in any way."[133] Although these courts may consider the blue-pencil rule in the future, Virginia courts currently apply the no-modification approach.
Washington	**Blue-pencil rule**
Labriola v. Pollard Group, Inc., 100 P.3d 791 (Wash. 2004)	Washington courts generally uphold covenants not to compete in employment agreements if they are reasonable in duration and geographical scope and are necessary to protect the legitimate business interests of the employer.[134]
Seattle Professional Engineering Employees Ass'n v. Boeing Co., 991 P.2d 1126 (Wash. 2000)	If a restriction is unreasonable, however, courts may partially rescind the offending provisions by applying the blue-pencil test.[135]
West Virginia	**Blue-pencil rule**
Huntington Eye Associates, Inc. v. LoCascio, 553 S.E.2d 773 (W. Va. 2001)	West Virginia courts hold that an employee covenant not to compete is unreasonable on its face if its time or area limitations are excessively broad, or where the covenant appears designed to intimidate employees rather than to protect the employer's business.[136]
Reddy v. Community Health Foundation of Man, 298 S.E.2d 906 (W. Va. 1982)	Where the unreasonable portions of the covenant are severable, however, West Virginia courts will apply the blue-pencil rule in order to enforce a noncompete agreement.[137]

State/ Relevant Legal Authority	Judicial Approach/ General Common Law Principles Followed in Judicial Review
Wisconsin	**No-modification**
H & R Block Eastern Enterprises, Inc. v. Swenson, 745 N.W.2d 421 (Wis. App. 2007)	Wisconsin statutes express a strong public policy against the enforcement of unreasonable trade restraints on employees, but courts will enforce such restrictive covenants if they (1) are necessary to protect the employer, (2) provide a reasonable time limit, (3) provide a reasonable territorial limit, (4) are not harsh or oppressive to the employee, and (5) are not contrary to public policy.[138]
WIS. STAT. § 103.465 (1998)	In addition, the Wisconsin legislature has adopted the no-modification approach regarding unreasonable restraints. If a portion of the covenant is unreasonable, the entire covenant is unenforceable.[139]
Wyoming	**Limited reasonable modification**
Hopper v. All Pet Animal Clinic, Inc., 861 P.2d 531 (Wyo. 1993)	Wyoming courts hold that a valid and enforceable covenant not to compete requires showing that the covenant is in writing; part of a contract of employment; based on reasonable consideration; reasonable in durational and geographical limitation; and not against public policy.[140] If a restriction is unreasonable, courts have "the ability to narrow the [unreasonable] term of a covenant not to compete and enforce a reasonable restraint."[141] Therefore, Wyoming courts have adopted a limited reasonable-modification approach.

Endnotes

1. *See* Glenn v. Dow AgroSciences, LLC, 861 N.E.2d 1, 9 (Ind. Ct. App. 2007); Access Organics, Inc. v. Hernandez, 175 P.3d 899, 902 (Mont. 2008); Reed Mill & Lumber Co., Inc. v. Jensen, 165 P.3d 733, 736 (Colo. Ct. App. 2006).

2. Wagler Excavating Corp. v. McKibben Constr., Inc., 679 N.E.2d 155, 157 (Ind. Ct. App. 1997); Bennett v. Storz Broad. Co., 134 N.W.2d 892, 899–900 (Minn. 1965); Brentlinger Enters. v. Curran, 752 N.E.2d 994, 999 (Ohio Ct. App. 2001).

3. *Wagler Excavating*, 679 N.E.2d at 157–58; *see also* Payroll Advance, Inc. v. Yates, 270 S.W.3d 428, 434 (Mo. Ct. App. 2008); Reardigan v. Shaw Indus., Inc., 518 S.E.2d 144, 148 (Ga. Ct. App. 1999).

4. Frederick v. Prof'l Bldg. Maint. Indus., Inc., 344 N.E.2d 299, 302 (Ind. Ct. App. 1976) (10-year limitation on janitorial services contractor was unreasonable); Precision Walls, Inc. v. Servie, 568 S.E.2d 267, 273 (N.C. Ct. App. 2002) (one-year time restriction on interior and exterior wall systems project manager was reasonable); *Reed Mill*, 165 P.3d at 736 (noncompete agreements up to five years and within 100 miles are commonly upheld).

5. *Frederick*, 344 N.E.2d at 302 (geographic scope unreasonable where area of restriction was more broad than the area in which he previously worked); Howard Schultz & Assocs. of the SE., Inc. v. Broniec, 236 S.E.2d 265, 267 (Ga. 1977) (noncompete agreement is "strictly limited in time and territorial effect").

6. *See* Gleeson v. Preferred Sourcing LLC, 883 N.E.2d 164 (Ind. Ct. App. 2008); Hulcher Servs., Inc. v. R.J. Corman R.R. Co., L.L.C., 543 S.E.2d 461, 467 (Ga. Ct. App. 2000); Williams v. N. Tech. Servs., 568 N.W.2d 784, 785 (Wis. Ct. App. 1997).

7. Hamblen v. Danners, Inc., 478 N.E.2d 926, 928 (Ind. Ct. App. 1985) (holding that noncompetition clauses in the contract were not independent consideration for an oral promise of permanent employment); TMC Worldwide, L.P. v. Gray, 178 S.W.3d 29, 37 (Tex. Ct. App. 2005); Access Organics, Inc. v. Hernandez, 175 P.3d 899, 903 (Mont. 2008).

8. Gillespie v. Carbondale & Marion Eye Ctrs., Ltd., 622 N.E.2d 1267, 1270 (Ill. App. 1993).

9. *See* Prudential Ins. Co. of Am. v. Sempetream, 525 N.E.2d 1016, 1020 (Ill. App. 1988) (noting that where the agreement had no temporal or geographic limitations, it was too vague and ambiguous to be rewritten and enforced).

10. Eichmann v. Nat'l Hosp. & Health Care Servs., Inc., 719 N.E.2d 1141, 1149 (Ill. Ct. App. 1999).

11. FLA. STAT. ANN. § 542.335(1)(c) (West 1996).

12. Southernmost Foot & Ankle Specialists, P.A. v. Torregrosa, 891 So. 2d 591 (Fla. App. 2004).

13. BDO Seidman v. Hirshberg, 712 N.E.2d 1220 (N.Y. 1999).

14. *Id.* at 1226.

15. *Id.*

16. *Id.* at 1227.

17. *Id.*

18. *See* Eichmann v. Nat'l Hosp. & Health Care Servs., Inc., 719 N.E.2d 1141 (Ill. Ct. App. 1999); Loewen Group Acquisition Corp. v. Matthews, 12 P.3d 977 (Okla. App. 2000); Leon M. Reimer & Co., P.C. v. Cipolla, 929 F. Supp. 154 (S.D.N.Y. 1996).

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