

New York State Attorney General
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Non-Compete Agreements In New York State Frequently Asked Questions

What is a non-compete agreement?

A non-competition agreement (“non-compete”) prohibits an employee from working for a competitor or opening a competing business, typically for a certain period of time after an employee leaves a job. A non-compete may be one section of an employment contract or a standalone contract that an employee signs before or after employment begins.

Are non-competes legal?

A non-compete is only allowed and enforceable to the extent it (1) is necessary to protect the employer’s legitimate interests, (2) does not impose an undue hardship on the employee, (3) does not harm the public, and (4) is reasonable in time period and geographic scope. An employer’s legitimate interest may include protecting an employer’s trade secrets and confidential information and preventing employees from taking specialized skills they gained on the job to a competitor. A non-compete’s restrictions must be no greater than necessary to protect the legitimate interests of the employer.

To determine if a non-compete is enforceable, courts consider an employee’s job duties, the employer’s business interest, and the language of the agreement. A court will not enforce a non-compete unless it determines the non-compete meets the criteria in the above paragraph.

A court may require an employee to comply with some parts of a non-compete agreement, even if other portions of the agreement are unreasonable, such as length of time or geographic scope. Generally, upon finding portions of a non-compete unreasonable, a court may invalidate the agreement entirely or may enforce the agreement for a shorter time or in a smaller area.

Do I have to sign a non-compete?

No law requires you to sign a non-compete, but an employer is allowed to require you to sign a non-compete before or after you start work. Employees can easily overlook the terms of a non-compete if they are told they must sign it just to be hired or to continue employment. In doing so, employees may unintentionally sign unenforceable non-competes.

How could a non-compete affect me?

Depending upon its terms, a non-compete may limit your ability to accept a new job for a certain period of time within a certain geographic area. If a non-compete is too restrictive, then it may be difficult to find new work with higher wages or better job opportunities.

How do employers enforce non-competes?

An employer can file a lawsuit and ask a court to enforce the non-compete and require the employee to follow its terms. Some employers may send a letter to the employee or to the employee's new employer threatening to file a lawsuit to discourage employees from taking a new job.

Before signing a non-compete

1. Before accepting a new job, ask the employer if you will have to sign a non-compete.
2. Before signing, make sure you read and understand any document that an employer asks you to sign.
3. Remember that a non-compete is a contract and that you can try to negotiate its terms.

Consider these questions before signing:

- **What businesses are considered competitors?** A non-compete may not be enforceable if the definition of a competitor is too broad or prevents you from working in an entire sector or industry.
- **How long does the non-compete period last?** Non-competes should be limited in time.
- **What geographic area does it cover?** Is the geographic scope so large that you might have to move to get a job with another employer in the industry?
- **Are you getting anything in exchange for signing the non-compete?** For example, some employers provide a bonus or specialized training, guarantee employment for a certain time, or provide payment for some or all of the non-compete period in exchange for signing a non-compete.
- **Can you have a lawyer review** the language and advise you on its potential consequences or negotiate with the employer on your behalf?

What can I do if I signed a non-compete?

If you have signed a non-compete and are thinking of leaving your job, consider whether your new employment would violate the terms of your agreement. Seek legal advice if you are not sure.

If your employer threatens to enforce a non-compete agreement against you, consider contacting an attorney to determine whether the employer would be successful in court.

Ending Overly Broad Non-Competes

In recent years, the Attorney General has investigated suspected misuse of non-competes for rank-and-file employees, and we have reached agreements with employers to stop using non-competes for employees who did not have access to trade secrets or confidential information:

- The sandwich chain [Jimmy John's](#) agreed to stop using non-competes for its sandwich makers. The non-competes had prohibited them from working at another Jimmy John's location for one year or for any other restaurant that earns more than 10% of its revenue from sandwiches, within a two-mile radius of a Jimmy John's location, for two years.
- The legal news website [Law360](#) agreed to stop using non-competes for editorial employees that had prohibited them from working for any media outlet that provides legal news for one year after employment ended.
- The co-working company [WeWork](#) agreed to stop using non-competes for cleaners and many other rank-and-file employees. The non-competes had prohibited these employees from working for any competitor in any of the dozens of cities where WeWork operates nationally and internationally for one year after employment ended.
- The national medical information services company [EMSI](#) agreed that phlebotomists and other rank-and-file employees would no longer be prohibited by a non-compete from working for a competitor.
- The healthcare staffing company [Supplemental Health Care](#) agreed to stop using non-competes for many of its employees in administrative, human resources, and payroll job titles and agreed to substantially reduce the geographic area restriction for those employees that remained subject to the non-compete.