



OFFICE OF THE ATTORNEY GENERAL STATE OF ILLINOIS

100 W. RANDOLPH STREET, CHICAGO, IL 60601
WORKPLACE RIGHTS BUREAU

Non-Compete Agreements - Frequently Asked Questions

WHAT IS A NON-COMPETE AGREEMENT?

A *non-compete agreement* is a contract or section in a contract that prohibits an employee from going to work for a competitor after leaving a job. Non-compete agreements usually apply only for a certain period of time after an employee leaves the job and only in a particular geographic area.

ARE NON-COMPETE AGREEMENTS LEGAL?

A court will look at the specific facts of an employee's job duties, the employer's business interest and the language of the agreement to determine whether the non-compete agreement is enforceable.

In Illinois, employers cannot require employees who earn less than \$13 per hour (or the local minimum wage if higher) to sign a non-compete agreement.

Employees who earn more than \$13 per hour can be asked to sign a non-compete agreement, but the agreement must comply with Illinois law to be valid and enforceable. Generally, Illinois courts will only allow or enforce a non-compete agreement if it:

1. is narrowly tailored to promote an employer's legitimate business interest;
2. does not impose an undue burden on the affected employee; and
3. does not injure the public interest

HOW DO NON-COMPETE AGREEMENTS IMPACT EMPLOYEES?

Depending upon how it is written, a non-compete agreement may limit an employee's ability to seek a new job for a certain period of time, within a certain geographic area. If a non-compete agreement is too restrictive and creates an undue burden for the employee, then it may be difficult to find new work with higher wages or better job opportunities.

ARE THERE BENEFITS OF NON-COMPETE AGREEMENTS?

Non-compete agreements can help protect an employer's business interests by preventing employees with access to trade secrets or other confidential information from taking that information to rival competitors or firms.

HOW DO EMPLOYERS ENFORCE NON-COMPETE AGREEMENTS?

An employer can file a lawsuit and ask a court to enforce the agreement and require the employee to follow the terms. Some employers may send a letter threatening to file a lawsuit to discourage employees from taking a new job.

CAN AN EMPLOYER WITHHOLD EMPLOYEES' WAGES IF THEY DO NOT COMPLY WITH A NON-COMPETE AGREEMENT?

No. Employees have a right to be paid for work they have performed, regardless of a non-compete agreement. An employer must file a lawsuit if it wants to collect monetary damages from an employee who has violated the terms of his or her non-compete agreement.

Non-Compete Agreements - Consideration for Employees

BEFORE SIGNING A NON-COMPETE AGREEMENT

1. Not all employment agreements contain a non-compete agreement and some employers will not mention it proactively. Before you accept a new job, ask your employer if you will have to sign a non-compete agreement. Sometimes a non-compete agreement is a separate form; sometimes it is just a paragraph in your employment contract.
2. If an employer says they will not enforce a non-compete agreement, consider asking for that promise in writing.
3. Read all paperwork and understand the non-compete agreement before signing. Consider questions such as:

What businesses are considered competitors? A non-compete agreement may not be enforceable if the definition of a competitor is too broad or if it excludes you from working in an entire field or industry.

How long does the agreement last? Non-compete agreements should be limited in time.

Does it apply to a particular geographic area? If so, is the geographic restriction so large that you might have to move to get a different job in the industry? Some courts have found that a non-compete agreement should only apply in an area or territory in which an employee could have established a relationship with the employer's clients.

Are you getting anything in exchange for signing the non-compete agreement? For example, some employers provide a bonus, specialized training or a guaranteed job for a certain period of time in exchange for signing a non-compete agreement. Although it is not an established rule, some Illinois courts have held that an employer must provide some benefit other than a job that you can be fired from at any time for a non-compete agreement to be enforceable.

IF YOU HAVE SIGNED A NON-COMPETE AGREEMENT

1. Whether a court would find a specific non-compete agreement enforceable will depend on the nature of your job and the terms of the non-compete agreement itself. If you have signed a non-compete agreement 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.
2. 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.

Additional questions? Contact Illinois Attorney General Lisa Madigan's Workplace Rights Bureau at 1-844-740-5076 or workplacerrights@atg.state.il.us.

