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Non-Compete Laws: New Jersey

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A Q&A guide to non-compete agreements between employers and employees for private employers in New Jersey. This Q&A addresses enforcement and drafting considerations for restrictive covenants, such as post-employment covenants not to compete and non-solicitation of customers and employees. Federal, local, or municipal law may impose additional or different requirements. Answers to questions can be compared across a number of jurisdictions (see Non-Compete Laws: State Q&A Tool).

Overview of State Non-Compete Law

1. If non-competes in your jurisdiction are governed by statute(s) or regulation(s), identify the state statute(s) or regulation(s) governing:

- Non-competes in employment generally.
- Non-competes in employment in specific industries or professions.

General Statute and Regulation

In New Jersey, there is no state statute or regulation governing general non-competes in employment.

Industry- or Profession-Specific Statute or Regulation

Lawyers: N.J. RPC 5.6

Non-compete agreements in the legal industry are governed by N.J. RPC 5.6.

Licensed Psychologists: N.J.A.C. 13:42-10.16

Non-compete agreements for psychologists licensed by the New Jersey Board of Psychological Examiners are governed by N.J.A.C. 13:42-10.16.

For more information on non-compete agreements for health care workers, see Practice Note, Health Care Non-Compete State Law Chart: Overview: New Jersey.

2. For each statute or regulation identified in Question 1, identify the essential elements for non-compete enforcement and any absolute barriers to enforcement identified in the statute or regulation.

General Statute and Regulation

New Jersey has no state statute or regulation governing general non-competes in employment.

Industry- or Profession-Specific Statute or Regulation

Lawyers: N.J. RPC 5.6

A lawyer cannot offer or make:

- A partnership or employment agreement that restricts lawyers from practicing law after ending the relationship, except for agreements concerning retirement benefits.
- A settlement agreement between private parties that restricts lawyers from practicing law.

(N.J. RPC 5.6.)

Licensed Psychologists: N.J.A.C. 13:42-10.16

A licensed psychologist cannot enter into an agreement that interferes with or restricts a client's ability to see the client's preferred therapist (N.J.A.C. 13:42-10.16; *Comprehensive Psych. Sys., P.C. v. Prince*, 375 N.J. Super. 273, 276-77 (App. Div. 2005)).

For more information on non-compete agreements for health care workers, see Practice Note, Health Care Non-Compete State Law Chart: Overview: New Jersey.

Common Law

A non-compete agreement must be reasonable in scope and duration.

To determine if a non-compete covenant is reasonable, courts use a three-prong test, including whether the covenant:

- Is necessary to protect the employer's legitimate interests.
- Causes undue hardship on the former employee.
- Is against the public interest.

(*Maw v. Advanced Clinical Commc'ns, Inc.*, 179 N.J. 439, 447 (2004); *Accountteks.net, Inc. v. CKR Law*, 475 N.J. Super. 493 (App. Div. 2023).)

Legitimate Interest

An employer has a legitimate interest in protecting:

- Customer relationships.
- Trade secrets.
- Confidential business information.

(*Coskey's Television & Radio Sales & Serv., Inc. v. Foti*, 253 N.J. Super. 626, 636 (App. Div. 1992).)

If a party is a physician, an employer also has a legitimate interest in protecting:

- Patient referral bases.
- Confidential business information (for example, patient lists).
- Return of investment on training.

(*Cmty. Hosp. Grp., Inc. v. More*, 183 N.J. 36, 58 (2005).)

Non-healthcare employers have sought to protect similar interests in:

- The printing industry (*Nat'l Reprographics, Inc. v. Strom*, 621 F. Supp. 2d 204, 215-16 (D.N.J. 2009).
- Ice skating trainer instruction (*Davidovich v. Israel Ice Skating*, 446 N.J. Super. 127, 159 (App. Div. 2016).

Courts look for a relationship between an employer's legitimate interest and the consideration offered in exchange for signing a non-compete. A court may hold a non-compete unenforceable where both:

- The primary purpose is clearly its anticompetitive effect.
- The employer did not condition signing on consideration logically related to a recognized legitimate interest.

(*Coskey's*, 253 N.J. Super. at 635-36; *ADP, LLC v. Rafferty*, 923 F.3d 113, 123 (3d Cir. 2019).)

Courts have found certain stock options were adequate consideration to protect a legitimate business interest where:

- The stock options were not conditioned on anything other than signing a non-compete.
- The stock options were only offered to high-performing employees.
- Employees were not penalized for rejecting the stock option if they did not sign a non-compete.

(*ADP*, 923 F.3d at 123-25.)

Undue Hardship

When determining whether a non-compete causes undue hardship, a court considers:

- The likelihood that the employee will find other work in the employee's field.
- The restriction's burden on the employee.

(*Cmty. Hosp.*, 183 N.J. at 59.)

A court is less likely to find undue hardship if the employee terminates the employment relationship because the employee's actions caused the restriction to go into effect (*Cmty. Hosp.*, 183 N.J. at 59).

Public Interest

New Jersey courts balance the public's right to freely access professional advice with the employer's legitimate patient or client relationships. For example, a court balanced a hospital's interest in protecting its referral bases with the potential public harm in preventing a neurosurgeon from working in an area with a neurosurgeon shortage (*Cmty. Hosp.*, 183 N.J. at 57-62).

Enforcement Considerations

3. If courts in your jurisdiction disfavor or generally decline to enforce non-competes, please identify and briefly describe the key cases creating relevant precedent in your jurisdiction.

New Jersey courts generally only enforce restrictive covenants if they are reasonable in scope and duration (*Cmty. Hosp.*, 183 N.J. at 56-57). As New Jersey disfavors restraints on trade, restrictive covenants are narrowly construed (see *J.H. Renarde, Inc. v. Sims*, 312 N.J. Super. 195, 205-06 (Ch. Div. 1998)).

4. Which party bears the burden of proof in enforcement of non-competes in your jurisdiction?

Under New Jersey law, the employer has the burden of proof to show that the covenant is reasonable (see *Cmty. Hosp.*, 183 N.J. at 45-46).

5. Are non-competes enforceable in your jurisdiction if the employer, rather than the employee, terminates the employment relationship?

New Jersey courts have held that an employer may enforce a non-compete if the employer terminated the relationship. For example:

- A restrictive covenant was enforced against a discharged employee (*Hogan v. Bergen Brunswig Corp.*, 153 N.J. Super. 37, 41-44 (App. Div. 1977)).
- A restrictive covenant against an employee whose employment contract was not renewed was enforced (*Pierson v. Med. Health Ctrs., P.A.*, 183 N.J. 65, 68-70 (2005)).

However, a non-compete is not enforced after termination if it conflicts with the agreement terms (see *All Quality Care, Inc. v. Karim*, 2005 WL 3526089, at *3-4 (N.J. Super. Ct. App. Div. Dec. 27, 2005)).

A court may consider the reasons for discharge in assessing whether and to what extent a restrictive covenant should be enforced. If a restriction creates an undue hardship, a court may not enforce it regardless of the reason for termination. Determining whether a hardship is undue often requires an examination of the underlying reasons for termination. (See *Cmty. Hosp.*, 183 N.J. at 59.)

Blue Penciling Non-Competes

6. Do courts in your jurisdiction interpreting non-competes have the authority to modify (or blue pencil) the terms of the restrictions and enforce them as modified?

A New Jersey court may modify or blue pencil an overbroad covenant when it is reasonable to do so (*Solari Indus.*, 55 N.J. at 585).

For example:

- The court reduced a neurosurgeon's non-compete restriction from 30 miles to 13 miles because a hospital located outside the 13-mile radius had a neurosurgeon shortage, and keeping the neurosurgeon from working at that hospital violated public policy (*Cmty. Hosp.*, 183 N.J. at 60-63).
- The court limited a sales employee's non-solicit restriction to only the former employer's existing customers, not to potential customers (*Platinum Mgmt., Inc. v. Dahms*, 285 N.J. Super. 274, 296-99 (Law Div. 1995)).
- A federal court applying New Jersey law, though finding the geographic scope of the non-compete provision in a franchise agreement to be overbroad, elected not to blue pencil the agreement because:
  - there was no testimony or affidavit explaining how a more limited covenant could reasonably protect the franchisor's legitimate interests; and
  - the franchisees already agreed to five types of injunctive relief, which the court found to be sufficient to protect the franchisor's legitimate interests.

  (*Lawn Doctor, Inc. v. Rizzo*, 2012 WL 2505537, at *3 (D.N.J. June 27, 2012).)

Choice of Law Provisions

7. Will choice of law provisions contained in non-competes be honored by courts interpreting non-competes in your jurisdiction?

A court generally enforces contractual choice of law provisions unless the chosen state's law violates New Jersey public policy (*Kalman Floor Co., Inc. v. Joseph L. Muscarelle, Inc.*, 196 N.J. Super. 16, 21 (App. Div. 1984)).

For example:

- A federal court applying New Jersey law upheld a choice of law provision because:
  - the parties did not object; and
  - the provision did not violate New Jersey public policy.

  (*Meadox Meds., Inc. v. Life Sys., Inc.*, 3 F. Supp. 2d 549, 551 (D.N.J. 1998).)
- A superior court upheld the choice of law provision because there was no significant difference between the two states' laws (*Raven v. Klein & Co., Inc.*, 195 N.J. Super. 209, 213 (App. Div. 1984)).

Reasonableness of Restrictions

8. What constitutes sufficient consideration in your jurisdiction to support a non-compete agreement?

Under New Jersey law, sufficient consideration for a non-compete agreement includes:

- An employment offer.
- A promise of continued employment.
- Continued at-will employment.
- A change in the employment terms.

For example:

- A non-compete signed at hire was supported by adequate consideration (*A.T. Hudson & Co. v. Donovan*, 216 N.J. Super. 426, 431-32 (App. Div. 1987)).
- An employee's continued employment for three years after signing the non-compete was adequate consideration (*Hogan*, 153 N.J. Super. at 42-43).
- A contract with new terms signed during the term of employment was enforced. However, the court did not discuss consideration. (*Solari Indus.*, 55 N.J. at 585.)

9. What constitutes a reasonable duration of a non-compete restriction in your jurisdiction?

In New Jersey, a reasonable duration depends on the facts of the case (see *Karlin v. Weinberg*, 77 N.J. 408, 421 (1978)). For example, the court limited a restrictive covenant to the period needed for an employer or any new associate to demonstrate the associate's effectiveness to the patients (*Karlin*, 77 N.J. at 423).

Courts have regularly enforced time restrictions of one to five years. For example:

- A physician's two-year non-compete restriction was enforced because the physician did not challenge the restriction's reasonableness (*Pierson*, 183 N.J. at 69).
- A five-year non-compete restriction was enforced because the court considered five years in general a reasonable duration for a non-compete restriction (*Rubel & Jensen Corp. v. Rubel*, 85 N.J. Super. 27, 34-35 (App. Div. 1964)).
- A nine-month non-compete restriction was enforced because there was no evidence that it was unreasonable (*J.H. Renarde, Inc.*, 312 N.J. Super. at 201-04).
- A federal court applying New Jersey law:
  - determined that blue penciling the non-compete agreement would cause additional harm to the former employer's business; and
  - noted that two-year restrictive covenants are generally found to be reasonable in New Jersey.

  (*Stryker v. Hi-Temp Specialty Metals, Inc.*, 2012 WL 715179, at *7 (D.N.J. Mar. 2, 2012).)

10. What constitutes a reasonable geographic non-compete restriction in your jurisdiction?

In New Jersey, a reasonable geographic restriction depends on the facts of the case (*Karlin*, 77 N.J. at 422).

For example:

- A superior court upheld a non-compete restricting a former employee's business activities in 11 counties even though the employer did not conduct business in all the counties, because

the parties reasonably thought that the employer would expand to the entire area (*Rubel & Jensen Corp.*, 85 N.J. Super. at 34-35).

- A federal court applying New Jersey law enforced a non-compete without geographic limitations where the employer's business included making nationwide calls (*Scholastic Funding Grp., LLC v. Kimble*, 2007 WL 1231795, at *5 (D.N.J. Apr. 24, 2007)).
- A 30-mile non-compete against a neurosurgeon was held unreasonable because preventing the neurosurgeon from working at a neighboring hospital with a neurosurgeon shortage was against public policy (*Cmty. Hosp.*, 183 N.J. at 60-62).
- A federal court applying New Jersey law held that a 38-state restriction against the operation of a competing lawn care business by a company's former franchisees was unreasonable given that the former franchisees had operated a franchise in a relatively small area in only one state (*Lawn Doctor, Inc.*, 2012 WL 6156228, at *5 (D.N.J. Dec. 11, 2012)).

11. Does your jurisdiction regard as reasonable non-competes that do not include geographic restrictions, but instead include other types of restrictions (such as customer lists)?

In New Jersey, a non-compete covenant limited to the employee's clients is a reasonable alternative to a geographic limit (*Solari Indus.*, 55 N.J. at 586).

For example:

- A state court enforced a non-compete prohibiting an employee from soliciting or accepting business from the former employer's customers. The non-compete did not have a geographic limitation and was limited to a specific product. (*Platinum Mgmt.*, 285 N.J. Super. at 292-99.)
- A federal court applying New Jersey law held that a non-compete targeted to specific customers is reasonable, even if there are no geographic restrictions (*Pathfinder, LLC v. Luck*, 2005 WL 1206848, at *7 (D.N.J. May 20, 2005)).

However, a court may deem a non-compete unreasonable if it prevents a former employee from soliciting clients who:

- Developed a relationship with the former employee before the employee worked for the employer.
- Did not do business with the employer.

(*Coskey's*, 253 N.J. Super. at 635-36.)

For example:

- A court rejected a non-compete prohibiting a former employee from competing with the employer in the employer's present and future marketing area. The former employee developed relationships with potential clients in the areas before the employee worked for the employer. Therefore, the employer did not have a legitimate business interest in those relationships, and the employee would suffer undue hardship from the restriction. (*Coskey's*, 253 N.J. Super. at 635-36.)
- A federal court applying New Jersey law rejected a non-solicitation agreement because the distributor created its own customer relationships without the company's help (*Meadox Meds., Inc.*, 3 F. Supp. 2d at 552-53).

12. Does your jurisdiction regard as reasonable geographic restrictions (or substitutions for geographic restrictions) that are not fixed, but instead are contingent on other factors?

In New Jersey, employers may substitute restrictions prohibiting an employee from soliciting or accepting business from the former employer's customers for geographic limitations (*Platinum Mgmt.*, 285 N.J. Super. at 292-99).

For more information on geographic restrictions, see Questions 10 and 11.

13. If there is any other important legal precedent in the area of non-compete enforcement in your jurisdiction not otherwise addressed in this survey, please identify and briefly describe the relevant cases.

A federal court applying New Jersey law considered a former employee's claim for a preliminary injunction preventing the employer from enforcing a non-compete agreement as currently written. The employee also asked for declaratory relief in the form of blue penciling the agreement. Though the employee had not yet created a competing business, the court determined that the claims could proceed once:

- The employee had a plan to form a competing business.

- The planned business operation was not contingent on any funding issues related to hiring additional employees.

(*Stryker*, 2012 WL 715179, at *5.)

The New Jersey Supreme Court held that the New Jersey Conscientious Employment Protection Act (CEPA) does not cover an employer's decision to terminate an employee based on their refusal to execute a non-competition agreement as a condition for continued employment (N.J.S.A. 34:19-1 to 34:19-8). Under the CEPA, employers cannot retaliate against an employee who objects or refuses to participate in any activity, policy, or practice that the employee reasonably believes is against public policy. The court held that the CEPA did not apply in this case because:

- The employee's dispute with the employer about the reasonableness of the non-compete's terms was private in nature.
- There is no clear mandate as to non-competes under New Jersey law.
- The non-compete agreement does not affect:
  - public health;
  - public safety;
  - public welfare; or
  - protection of the environment.

(*Maw*, 179 N.J. at 445-46.)

The Superior Court of New Jersey, Appellate Division, addressed whether:

- A break in employment triggered the start of a post-employment restriction period.
- A restrictive covenant automatically renews on an employee's rehiring.

(*Truong, LLC v. Tran*, 2013 WL 85368 at *6-7 (N.J. Super. Ct. Jan. 9, 2013).)

The court concluded that the restrictive covenant begins to run when an employee terminates the employee's employment, regardless of cause. To revive the rights under the initial agreements, the employer and the employee would have had to reach a new agreement. In this case, the employee left in 2009, and the restrictive covenant expired two years later. The agreement did not "spring back to life" simply because the employee returned to work after an alleged breach. (*Truong*, 2013 WL 85368, at *6-11.)

The appellate division of the New Jersey Superior Court recently held that a non-compete covenant contained in an employee handbook was not enforceable, because the handbook also contained a disclaimer stating that the handbook was not a binding contract (*Network Infrastructure Techs., Inc. v. Hackensack Univ. Med. Ctr.*, 2024 WL 4658737, at *21-23 (N.J. Super. Ct. App. Div. Nov. 4, 2024), cert. denied 2025 WL 1580899 (N.J. May 30, 2025)).

Employers must be diligent in documenting their agreements.

Remedies

14. What remedies are available to employers enforcing non-competes?

A New Jersey court may award an employer:

- Tort damages.
- Lost profits.
- Incidental damages.
- Injunctive relief.

(*Platinum Mgmt.*, 285 N.J. Super. at 306-09.)

Damages that were foreseeable are only awarded when the parties foresaw them when they executed the non-compete (*Totaro, Duffy, Cannova & Co., LLC v. Lane, Middleton & Co., LLC*, 191 N.J. 1, 13-14 (2007)).

For example:

- A $250,000 award to an employer for the employee's contract breach and $75,000 for attorneys' fees (*Pierson*, 183 N.J. at 69-70).
- An employer was awarded lost profits and incidental damages, including:
  - lost profits from the former employee's solicitation of the employer's workers;
  - recruiting and training costs for the new employees; and
  - training costs of the departed employees.

  (*Wear-Ever Aluminum Inc. v. Townecraft Indus., Inc.*, 75 N.J. Super. 135, 150-51 (Ch. Div. 1962).)

15. What must an employer show when seeking a preliminary injunction for purposes of enforcing a non-compete?

To obtain a preliminary injunction in New Jersey, the applicant must prove:

- Irreparable harm.
- A reasonable probability of success on the merits.
- The balance of the parties' relative hardships favors the applicant.

(*Klabin Fragrances, Inc. v. Hagelin & Co., Inc.*, 2005 WL 1502254, at *1-2 (N.J. Super. Ct. Ch. Div. June 24, 2005).)

Irreparable harm is harm that money damages cannot adequately compensate (*Klabin Fragrances*, 2005 WL 1502254, at *5).

Examples include:

- Improper trade secret use.
- Injury to a business.
- Destruction of a business.

A party can establish irreparable harm by a showing of potential harm that cannot be redressed by a legal or an equitable remedy following a trial. A showing of past harm is not necessary to establish irreparable harm. (*ADP, Inc. v. Levin*, 2022 WL 1184202, at *2 (3d Cir. Apr. 21, 2022).)

Other Issues

16. Apart from non-competes, what other agreements are used in your jurisdiction to protect confidential or trade secret information?

Non-Solicitation Agreements

New Jersey courts analyze non-solicitation agreements as a covenant not to compete because of their similar purpose and effect (see *A.T. Hudson*, 216 N.J. Super. at 431-32).

However, New Jersey courts do recognize that non-solicitation agreements are often a less restrictive means of protecting the same interests that non-compete agreements protect. A full non-compete is often unnecessary where the protectable interest involves customer lists rather than a particular technology. A ban on solicitation may adequately protect an employer's interest in avoiding exploitation of a confidential customer list. (*Truong*, 2013 WL 85368, at *10.)

Non-Disclosure Provisions

New Jersey courts enforce reasonable non-disclosure provisions (*Raven*, 195 N.J. Super. at 213).

Holdover Clauses

Holdover clauses require an employee to assign the employee's right, title, and interest in any invention the employee made during employment. New Jersey courts analyze holdover clauses similar to non-competes (*Ingersoll-Rand Co. v. Ciavatta*, 110 N.J. 609, 623-28 (1988); see Question 3).

Trade Secrets

New Jersey has adopted a modified version of the Uniform Trade Secrets Act (UTSA) (N.J.S.A. 56:15-1 to 56:15-9). The UTSA protects employers' trade secrets from misappropriation by former employees even in the absence of a confidentiality agreement or non-compete. For more information on trade secret laws in New Jersey, see State Q&A, Trade Secret Laws: New Jersey.

17. Is the doctrine of inevitable disclosure recognized in your jurisdiction?

New Jersey has adopted the doctrine of inevitable disclosure. Injunctive relief against a former employee if the employee:

- Has access to a former employer's trade secrets.
- Will likely use the employer's trade secrets in the employee's new position.

(*Nat'l Starch & Chem. Corp. v. Parker Chem. Corp.*, 219 N.J. Super. 158, 162-63 (App. Div. 1987).)