

Your Non-Compete Agreement is Probably Not Enforceable. Here's Why.

AUTHOR: Micah C. Zeno
OCTOBER 4, 2018

Non-compete agreements have come under increased scrutiny. This is especially true in employment contracts for laborers and other non-managerial employees who do not have access to trade secrets or intellectual property. In Louisiana, a non-compete agreement must meet strict requirements to be enforceable. If you've been using the same non-compete agreement for years or for employees in different states, chances are your contract isn't enforceable in Louisiana. Here's why.

Your agreement is geographically vague. Louisiana requires that a restriction on the lawful exercise of a business must be limited to a "specified parish or parishes, or municipality or municipalities." This means that your non-compete agreement must list the specific cities or parishes where your non-compete is effective. An agreement that covers "the entire state" or "everywhere we do business" will likely have only limited enforceability, if at all.

The term of your non-compete is too long—or not long enough. Non-compete agreements in Louisiana can be in effect for up to two years from the date of severance of employment, last work performed under a contract, or sale of a business. As a result, your three or five-year non-compete agreement will be ineffective after year two. If your non-compete does not include a specific duration, a court will likely find that it may be terminated at any time by either party.

Louisiana presumes that your non-compete is invalid. The presumption in Louisiana is that all non-compete agreements are invalid—unless they meet the strict statutory requirements. If you're using a template or boiler plate provisions to draft an agreement for employees in different states, you may find that your generic non-compete doesn't meet the specific requirements of Louisiana law. And if you're thinking about applying the law of another state to your non-compete with your Louisiana employee—think again. Louisiana invalidates all choice-of-law and choice-of-forum clauses in employment agreements unless the employee agrees to it *after* an alleged breach of the non-compete.

For more information on drafting or enforcing a non-compete agreement or confidentially agreement in Louisiana, please contact Donna Phillips Currault or Micah Zeno.