**Non-Compete Agreements**

North Carolina employers are familiar with the oft-repeated maxim that NC disfavors non-competes. In fact, NC courts tend to dislike contracts restricting individuals from freely entering into trade or commerce. So, why use non-competition agreements in NC if the courts hate them so much? For obvious reasons, employers want to protect themselves and their investments. However, attempting to use your legal flamethrower to scorch the earth so that your ex-employees can never work again is obviously neither ideal nor possible.

Then, how does an employer successfully utilize a non-compete in this state? By narrowly tailoring documents to protect legitimate business interests and making their restrictions “reasonable.” What is “reasonable” is decided by NC courts on a case-by-case basis, but usually, reasonable restrictions are related to a non-compete’s duration, geographic location, and/or other common items. If drafted with reasonableness in mind, non-competes will have a better likelihood of withstanding a legal fight.

The following sections contain what NC courts have defined as “reasonable” in each of these areas:

**Reasonable Duration**

* NC courts have held that time restrictions in the range of six months to three years may be reasonable, depending upon geographic restrictions. This means that a nationwide restriction of six months may be feasible, whereas a statewide restriction of four years would not. However, it is typically “safest” to enforce a restriction on employee activity for six to eighteen months.
* [Hartman v. W.H. Odell & Associates](https://scholar.google.com/scholar_case?case=4519339790052082916&q=450+s.e.2d+912&hl=en&as_sdt=4,34) held that a five-year restriction from the date of termination could only be allowed under “extreme conditions,” and that a non-compete lasting ten years was “patently unreasonable.”
* Non-competes attached to the sale of a business may be enforceable for longer periods of time due to the unique nature involving purchases of “good will.” Courts have enforced restrictions for ten, fifteen, and twenty years, even to include the life of a party to the contract.

**Reasonable Geographic Location**

* NC courts consider the area of restriction, the area to which the employee was assigned and where the employee actually worked, the area where the employer operated, the type of business at issue, and the job of the employee alongside their knowledge of the employer’s business operations.
* Where customers are involved, employers must also show the following:
  + Customer location;
  + The amount of business in those locations;
  + Why the restriction is necessary for protection of these areas.

**Other Reasonable Restrictions**

* NC courts permit customer non-solicitations in the same way as they do non-competition agreements. These non-solicitations must only include customers with which the employee actually had business contact.

As shown above, non-competition agreements are both delicate and nuanced, and employers are best served by having theirs drafted and reviewed by legal counsel. If drafted with these principles of reasonableness in mind, non-competes will have a better likelihood of withstanding a legal fight.

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*Legal Disclaimer:  This article discusses general principles of North Carolina and federal law. It should not be considered legal advice for a particular factual setting and does not create an attorney-client relationship.*