A Q&A guide to non-compete law in District of Columbia.

**RELEVANT STATE 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**

While there is no statute that explicitly governs non-compete agreements (or non-competes), the District of Columbia (DC) Code prohibits any contract that unreasonably restrains trade (DC Code § 28-4502).

**INDUSTRY- OR PROFESSION-SPECIFIC STATUTE OR REGULATION**

There is no industry- or profession-specific statute or regulation.

**ENFORCEMENT**

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.

There are no cases generally declining to enforce non-competes.

4. Which party bears the burden of proof in enforcement of non-competes in your jurisdiction?
DC law places the burden of proof on the employer seeking to enforce the non-compete, as it must show the agreement does not unlawfully restrain trade (see Deutsch v. Barsky, 795 A.2d 669 (D.C. 2002)).

DC courts balance the interests of the employer and employee when analyzing non-competes. Relevant factors, as discussed by the court in Deutsch include:

- The employer’s (or promisee’s) legitimate business interest.
- The nature of the hardship imposed on the employee.

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

Although not rendering non-competes unenforceable automatically, a DC court may choose not to enforce a non-compete if the employee was terminated without good cause as a discretionary matter. For a case in which a court enforced a non-compete despite its applying equally to employees who were terminated, see Ellis v. James V. Hurson Associates Inc., 565 A.2d 615 (D.C. 1989). As with all cases in this jurisdiction, a fact-dependent inquiry determines whether the non-compete is reasonable and enforceable.

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?

Only one DC case authoritatively discusses the blue pencil rule (Ellis v. James V. Hurson Associates Inc., 565 A.2d 615 (D.C. 1989)). In that case, the DC Court of Appeals held that the trial court properly entered a preliminary injunction enforcing only a portion of a restrictive non-compete covenant. The court did not specifically adopt a universal blue pencil rule, however, because it found that the enforceable and unenforceable terms of the covenant were severable according to the contract terms. Given the limited opportunity the courts have had to consider the rule, it is unclear whether DC courts will apply the blue pencil rule to non-compete agreements in the future.

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

The case law is not settled on whether and when the DC courts will enforce choice-of-law provisions contained in non-competes. The DC courts have honored these provisions in non-compete agreements where they bear a substantial relationship to the parties (L.G. Balfour Co. v. McGinnis, 759 F.Supp. 840 (D.D.C. 1991) and NRM Corp. v. Hercules, Inc. 758 F.2d 676 (D.C. Cir. 1984)).

**REASONABLENESS OF RESTRICTIONS**

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

An offer of employment is sufficient consideration for a non-compete in DC. However, if the non-compete agreement is executed after employment begins, then some further consideration, such as a change in terms of employment, is likely necessary. The assurance of continued employment for a substantial period of time has been recognized as adequate consideration (Ellis v. James V. Hurson Associates Inc., 565 A.2d 615 (D.C. 1989)). In the Ellis case, substantial meant “approximately ten years.”

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

Although this inquiry is fact-specific, up to three years is often considered a reasonable duration for a non-compete restriction in DC (see Ellis v. James V. Hurson & Assoc., Inc., 565 A.2d 615 (D.C. 1989)). However, a DC court also found that three years was too restrictive where the business required manual unskilled labor and no significant trade secrets were involved (Chemical Fireproofing Corp. v. Krouse, 155 F.2d 422 (D.C. App. 1946)).

In other cases, longer restrictive periods have been permitted. Some examples include:

- **Erikson v. Hawley, 12 F.2d 491 (D.C. App. 1926).** In Erikson, a ten-year restriction in a contract between an orthodontist and his apprentice was considered a reasonable duration because it was a common time period in the industry and the apprentice received as consideration the benefit of his employer’s expertise.

- **Meyer v. Wineburgh, 110 F. Supp. 957 (D.D.C. 1953).** In Meyer, the court found that a five-year restriction was enforceable where the restriction was otherwise reasonable, did not create an unfair hardship and did not violate public policy.

Courts may consider several factors, as discussed in Chemical Fireproofing, when determining reasonableness of a non-compete restriction including the:

- Type of business.
- Services provided by the employee.
- Position of the employee.

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

To determine whether a geographic restriction is reasonable, DC courts look to the rule of reason, a fact intensive inquiry looking...
There is no other important legal precedent in this area.

**REMEDIERS**

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

Both injunctive relief and damages may be available to employers enforcing non-competes in DC (see *Meeker v. Stuart*, 188 F.Supp. 272 (D.D.C. 1960)).

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

To obtain a preliminary injunction under DC law, an employer must show that:
- It is likely to prevail on the merits of one of its claims.
- It would be irreparably harmed if the injunction is not granted.
- The employer's hardship without the injunction is greater than the employee's hardship suffered from the injunction.
- The injunction is in the public interest.

(*Jacksonville Port Authority v. Adams*, 556 F.2d 52 (D.C. Cir. 1977).)

**OTHER ISSUES**

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

Nondisclosure agreements are used and are enforced under the Uniform Trade Secrets Act (DC Code § 36-401 to 410). In addition, employers may use agreements not to solicit other employees and covenants prohibiting solicitation of customers to protect confidential or trade secret information.

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

The doctrine of inevitable disclosure is not recognized in DC.