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3 signs your noncompete agreement won't stand up in court

Lawyers offer advice on what not to do with a noncompete agreement.

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It can be a challenge to draft a noncompete agreement, especially if you're not a lawyer. Out of inexperience and confusion, many companies draft overly broad and restrictive noncompete contracts that won't hold up in court.

"Courts will not enforce agreements that unduly restrict an individual's right to work or to seek work," says attorney [Albert Rizzo](#). "The best noncompete provisions are carefully drafted to take into consideration a realistic restriction that benefits the former employer without unduly restricting the employee from earning a living."

I spoke with Rizzo and other attorneys with experience in this area of the law to find out more of what every company should know before it tries to write and enforce a noncompete agreement.

It's too restrictive

Employers must avoid drafting noncompete agreements that restrict a departing employee's ability to work or make a living. "If the restriction on the employee is for an unusually long period of time," you're going to have a problem. "One to two years is typically reasonable, while three to five years is unlikely to be upheld by a court," says attorney [James T. Hunt, Jr.](#)

Courts also tend to frown upon noncompete agreements that don't allow an employee to leave the region or state and continue to work, Hunt says. A noncompete agreement is unenforceable, "if the geographic scope of the restriction is far too broad. It depends on the type of business of employer, but usually cannot be broader than the geographic area in which the employer does business."

"As a rule of thumb, agreements of one to two years are generally upheld while acceptable geographic limitations vary depending on business location and number of offices and the nature of the industry and competition," explains attorney [Robert G. Schrader](#). "Can the employee still earn a living where they reside? With online businesses geographic restrictions are less relevant and the focus is more on time limitations and using proprietary information with a competitor."

It's not enforceable in a state where you operate

Depending on the state or states your business operates in, creating certain types of noncompete agreements may be a waste of time. "My best advice regarding noncompete agreements is to make sure that they're even valid in your state," says California lawyer [Bob King](#). "For example, here in California under state law, non-compete agreements are only enforceable in conjunction with the sale of a business or the dissolution of a partnership or LLC. All other noncompete agreements are void and unenforceable."

You may even get your company in trouble if you try to enforce an invalid agreement, says King. "[I]f you attempt to enforce a void noncompete agreement, you could be liable for unfair business practices, entitling the other party to restitution and their attorney's fees." When in doubt, check out your local laws.

It's confusing or misleading

As with any legal document, clarity is key. Hunt says that if the contract isn't crystal clear or contradicts itself, the court generally won't uphold it. "If any language is ambiguous, confusing, or contradictory, a court will construe it against the employer and in favor of the employee."