

List of General Questions

Note: Page numbers for answers to the questions below are provided state by state in the finding list beginning at page lv. A list of additional topics exploring issues beyond the general questions below and providing the relevant page numbers for information on those topics appears beginning at page lxix.

1. Is there a state statute of general application that governs the enforceability of covenants not to compete?
 - a. What state statutes govern the enforceability of covenants not to compete as regards specific professions?
2. What is an employer's protectable interest and how is that defined?
3. What must the plaintiff be able to show to prove the existence of an enforceable covenant not to compete?
 - a. Does the signing of a covenant not to compete at the inception of the employment relationship provide sufficient consideration to support the covenant?
 - b. Will a change in the terms and conditions of employment provide sufficient consideration to support a covenant not to compete entered into after the employment relationship has begun?
 - c. Will continued employment provide sufficient consideration to support a covenant not to compete entered into after the employment relationship has begun?
 - d. What factors will the court consider in determining whether time and geographic restrictions in the covenant are reasonable?
 - e. Who has the burden of proving the reasonableness or unreasonableness of the covenant not to compete?
 - f. What type of time or geographic restrictions has the court found to be reasonable? Unreasonable?

- g. Will the court allow a customer restriction to substitute for, or complement, a geographic restriction?
4. If the restrictions in the covenant not to compete are unenforceable because they are overbroad, are the courts permitted to modify the covenant to make the restrictions more narrow and to make the covenant enforceable? If so, under what circumstances will the courts allow reduction and what form of reduction will courts permit?
 5. What must the employer prove to obtain a preliminary injunction enforcing the covenant not to compete?
 6. If it is a necessary element of proof, how does the employer establish irreparable harm?
 7. What is the standard of review on appeal of a trial judge's decision, following a preliminary injunction hearing, enforcing or refusing to enforce a covenant not to compete?
 8. If the employer terminates the employment relationship, is the covenant enforceable?
 9. If the court finds the employee has breached the restrictive covenant, will the court measure the period of injunction from the date of termination of employment or from the date of the court order?
 10. What damages may an employer recover and from whom for breach of a covenant not to compete?
 11. Does a liquidated damage clause for breach of the covenant not to compete preclude injunctive relief to enforce the covenant?
 12. What choice of law rules apply to determine which state's law will govern an action seeking to enforce a covenant not to compete?
 - a. What rule does the state apply when considering a choice of law provision in a covenant not to compete case?
 - b. In the absence of a choice of law provision, what rule does the state apply in a covenant not to compete case?
 - c. Has the state considered forum selection or consent to jurisdiction clauses in a covenant not to compete case?
 13. Law review articles that examine the law of covenants not to compete in this state.
 14. Illustrative cases