

Non-Compete Agreements: What is a Reasonable Duration for a Restriction?



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It depends. The first question to ask is *when was this non-compete agreement signed?*

In Arkansas, the watershed date is July 22, 2015, which is when a landmark non-compete statute came into play.

For non-competes signed after July 21, 2015, two years is statutorily presumed to be a reasonable duration for a restriction to be enforceable. This is not absolute, however, as this general rule can be different where the facts and circumstances of a particular case clearly demonstrate that two years is unreasonable compared to the employer's protectable business interest. Thus, the ability to enforce a non-compete provision depends in part on the particulars of what is being protected. Employers cannot blindly rely on the two year number as a magic number, and we routinely help client make sure that a restriction is tailored to the needs of the employer.

For non-competes signed on or before July 21, 2015, there is less clarity on this question. Although Arkansas courts typically draw the same line in the sand at two years, there is no two year presumption. A court must determine the "reasonable duration" from the particular facts and circumstances of a case. In one oft cited pre-2015 decision, the Arkansas Supreme Court noted that restrictions of up to five years are not inherently unreasonable. *Dawson v. Temps Plus, Inc.*, 987 S.W.2d 722, 727 (Ark. 1999).

Other questions to ask include *who is being restricted? What are they being restricted from? What are the other extenuating circumstances?* Arriving at a decision on whether an agreement can be enforced is not as simple as running down a standard checklist. On either side of this issue, certain facts can alter the general rules outlined above. We frequently find ourselves arguing for judicial enforcement of non-competes, but just as often we also assist companies seeking to defeat enforcement of a competitor's non-compete. Often, the specifics of the past cases can make or break these arguments. At bottom, it is wise to seek an opinion from an experienced employment lawyer when trying to determine whether a non-compete is enforceable.

References:

Ark. Code Ann. § 4-75-101 (Arkansas Non-Compete Statute)

This article is part of the Mitchell Williams Non-Compete Agreement series explaining how non-compete agreements are interpreted and enforced. The series will be published weekly for a total of 7 articles.

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