

NON-COMPETE CLAUSES

A non-compete clause protects your legitimate business interests. They do so by preventing an employee or other party from using confidential information, intellectual property, and general know-how to compete with your business after their contractual relationship ends.

This factsheet explains how non-compete clauses prevent others from gaining an unfair advantage in the market.

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WHEN TO USE A NON-COMPETE CLAUSE



Non-compete clauses are commonly found in:

- employment agreements;
- sale of business contracts;
- franchise agreements; and
- contracts involving the disclosure of confidential information or trade secrets.

DETERMINING 'REASONABLE AND BALANCED'



To determine if your non-compete clauses will stand up in court, ask yourself:

- Does your business need to protect confidential information, trade secrets and client relationships?
- What specific activities does the clause restrict?
- How long does the clause restrict the other party from specific activities?
- Is the clause limited to a specific geographical area?
- Does the other party acknowledge and agree the interests are worth protecting?

AVOID OVERLY RESTRICTIVE CLAUSES



A non-compete clause that overly restricts a party's participation in the market or prevents them from offering their skills and expertise may be unreasonable and unenforceable.

Courts can modify or sever the clause to make it more reasonable and balanced.

BENEFITS OF USING A NON-COMPETE CLAUSE



Non-compete clauses protect your business' competitive advantage in addition to your confidential information, intellectual property, and employee training.

They also help prevent departing employees from luring away customers to their competing business.

Ultimately, businesses can protect their commercial interests and foster a sense of security.

PROTECTING GENUINE INTERESTS



For a non-compete clause to be enforceable, it must protect a genuine and quantifiable business interest. These may include:

- confidential information;
- intellectual property;
- know-how;
- trade secrets; and
- goodwill.