

Choice of Law in Noncompetition Law and Litigation



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Freedom of contract is a bedrock principle of American contract law. Where parties have freely entered into an agreement, courts are generally loath to second-guess its fairness. However, noncompetition agreements are a major exception to this principle. A noncompetition agreement can be a powerful tool for protecting confidential information, customer relationships, and goodwill, whether in the employment setting, in the sale of a business, or otherwise. But because a noncompetition agreement restricts a person's alternatives for pursuing gainful employment—a result regarded as a restraint of trade—strict standards of enforceability are imposed. In no other area of contract law do courts so routinely scrutinize the adequacy of consideration and the reasonableness of a contract's terms as in relation to noncompetition agreements.

To make matters more complicated, the legal standards governing noncompetition agreements differ drastically from one jurisdiction to the next. On one end of the spectrum are states like Michigan that generally enforce noncompetition agreements, provided they protect a legitimate business interest, are reasonable in scope, and are appropriately supported by consideration. On the other end of the spectrum are states like California, which prohibits noncompetition agreements in all but the narrowest circumstances. In the middle are states like Illinois and Oregon that impose strict and sometimes idiosyncratic requirements as conditions of enforceability. As a result of such differences, an agreement that is clearly enforceable in one jurisdiction may range from questionable to clearly unenforceable in others.

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