

Non-Compete Laws: Louisiana

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A Q&A guide to non-compete agreements between employers and employees for private employers in Louisiana. This Q&A addresses enforcement and drafting considerations for restrictive covenants such as post-employment covenants not to compete and non-solicitation of customers and employees. Federal, local, or municipal law may impose additional or different requirements. Answer to questions can be compared across a number of jurisdictions (see Non-Compete Laws: State Q&A Tool).

Overview of State Non-Compete Law

1. If non-competes in your jurisdiction are governed by statute(s) or regulation(s), identify the state statute(s) or regulation(s) governing:

- Non-competes in employment generally.
- Non-competes in employment in specific industries or professions.

General Statute and Regulation

In Louisiana, non-compete and non-solicitation agreements generally are governed by La. R.S. 23:921 (*Vartech Sys., Inc. v. Hayden*, 951 So. 2d 247, 260 (La. Ct. App. 2006)).

Industry- or Profession-Specific Statute or Regulation

Lawyers: LA ST BAR ART 16 RPC Rule 5.6

Non-compete and non-solicitation agreements for lawyers are governed by LA ST BAR ART 16 RPC Rule 5.6.

Automobile Salesmen: La. R.S. 23:921(I)

Non-compete and non-solicitation agreements between automobile dealers and salesmen are governed by La. R.S. 23:921.

Real Estate Brokers: La. R.S. 37:1448.1

Non-compete agreements between real estate brokers and licensees are governed by La. R.S. 37:1448.1.

2. For each statute or regulation identified in Question 1, identify the essential elements for non-compete enforcement and any absolute barriers to enforcement identified in the statute or regulation.

General Statute and Regulation

Louisiana law generally considers an agreement that restrains an employee from practicing a lawful profession, trade, or business null and void. However, an agreement may be enforceable if:

- It prevents the employee from carrying on or engaging in a competing or similar business to that of the employer.
- It is for a period of, at most, two years after the individual's termination date.
- It specifies the geographic scope by identifying, by name, the covered parishes and municipalities.
- The geographic scope is limited to areas where the employer conducts business.

(La. R.S. 23:921(C) and (D).)

Independent contractors, similarly, may enter into a non-compete agreement that:



- Prevents the contractor from engaging in a competing or similar business.
- Lasts for a maximum of two years after the date of the last work performed under the work contract.
- Is limited to geographic areas where the employer conducts business.
- Specifies the geographic scope by identifying the covered parishes and municipalities.

(La. R.S. 23:921(C) and (D).)

Industry- or Profession-Specific Statute or Regulation

Lawyers: LA ST BAR ART 16 RPC Rule 5.6

Lawyers may not enter into any agreement that restricts their right to practice:

- After terminating the partnership, shareholder, operating, employment, or other similar relationship, unless the agreement concerns retirement benefits.
- As part of the settlement of a client's case.

(LA ST BAR ART 16 RPC Rule 5.6.)

Automobile Salesmen: La. R.S. 23:921(I)

Automobile salesmen and employers cannot enter into non-compete agreements that prohibit salesmen from selling automobiles (La. R.S. 23:921(I)).

Real Estate Brokers: La. R.S. 37:1448.1

Real estate licensees entering into a non-compete agreement must be allowed to rescind the agreement until midnight of the third business day following the later of either:

- The execution of the agreement.
- The delivery of the agreement to the licensee.

(La. R.S. 37:1448.1(A).)

Additionally, the agreement must also:

- Be for a maximum of two years.
- Be prominently displayed in bold-faced block lettering of at least ten-point type.
- Be limited to geographic areas where the employer conducts business.
- Specify the geographic scope by identifying, by name, the covered parishes and municipalities.

(La. R.S. 37:1448.1(A).)

Enforcement Considerations

3. If courts in your jurisdiction disfavor or generally decline to enforce non-competes, please identify and briefly describe the key cases creating relevant precedent in your jurisdiction.

Louisiana law disfavors non-competes and non-solicitation agreements (*SWAT 24 Shreveport Bossier, Inc. v. Bond*, 808 So. 2d 294, 305 (La. 2001)). However, in 2015, the legislature amended La. R.S. 23:921 to add a provision stating "However, every contract or agreement, or provision thereof, which meets the exceptions as provided in this Section, shall be enforceable."

Non-compete and non-solicitation agreements must strictly comply with the requirements of La. R.S. 23:921 (*LaFourche Speech & Language Servs., Inc. v. Juckett*, 652 So. 2d 679, 680 (La. Ct. App. 1995)). For example, in:

- In a case before the Court of Appeal for the Fourth Circuit of Louisiana, the court held that a non-compete was enforceable because:
 - it was only for two years;
 - it was geographically limited to where the employer operated when the agreement was entered into; and
 - the covered parishes were identified in the agreement.

(*Dixie Parking Serv., Inc. v. Hargrove*, 691 So. 2d 1316, 1320-21 (La. Ct. App. 1997).)

- In a case before the Court of Appeal for the Second Circuit, the court held that a non-compete agreement was unenforceable because it did not specify a geographic limitation (*Sentilles Optical Servs. v. Phillips*, 651 So. 2d 395, 400 (La. Ct. App. 1995)).
- In a case before the US Court of Appeals for the Fifth Circuit, the court, applying Louisiana law, held that a non-compete agreement was unenforceable because it was overbroad and did not specify a parish or municipality (*Team Envtl. Servs. v. Addison*, 2 F.3d 124, 126 (5th Cir. 1993) (applying Louisiana law)).

4. Which party bears the burden of proof in enforcement of non-competes in your jurisdiction?

Under Louisiana law, the party seeking to enforce a non-compete agreement bears the burden of proof (*Vartech*

Sys., Inc., 951 So. 2d at 255). However, employers may obtain injunctive relief without proving irreparable injury if they show that the employee has breached the agreement (La. R.S. 23:921(H); *Vartech Sys., Inc.*, 951 So. 2d at 255). For more information, see Question 15.

5. Are non-competes enforceable in your jurisdiction if the employer, rather than the employee, terminates the employment relationship?

Under Louisiana law, unless the non-compete agreement or clause specifically provides otherwise, it is irrelevant how the employer-employee relationship terminated for purposes of enforcing non-compete obligations.

Blue Penciling Non-Competes

6. Do courts in your jurisdiction interpreting non-competes have the authority to modify (or “blue pencil”) the terms of the restrictions and enforce them as modified?

Louisiana courts strike any invalid part of a non-compete agreement if it contains a severability clause. A court may enforce the agreement if the rest of the agreement complies with La. R.S. 23:921. (*Arthur J. Gallagher & Co. v. Babcock*, 703 F.3d 284, 292 (5th Cir. 2012) (applying Louisiana law); *SWAT 24*, 808 So. 2d at 308-09.)

For example, in one case before the Louisiana Fourth Circuit Court of Appeal, the court modified a non-compete agreement to delete references to “subsidiaries and affiliates,” which the defendant argued were overbroad and overly inclusive (*Causin v. Pace Safety Consultants, LLC*, 2019 WL 385206, at *8 (La. Ct. App. 2019)).

However, Louisiana courts do not add or substitute new language that is not already present in a non-compete or non-solicitation agreement to prevent employers from routinely creating overbroad covenants (*Team Envtl. Servs.*, 2 F.3d 124 at 127). For example, in:

- One case before the Fourth Circuit Court of Appeal for Louisiana, the court did not enforce an agreement where the geographic scope was any parishes, counties, and municipalities where the employer conducted business, without naming or listing the specific parishes, counties, and municipalities (*Aon Risk Servs. of La., Inc. v. Ryan*, 807 So. 2d 1058, 1060-61 (La. Ct. App. 2002)).

- Another case before the Fourth Circuit Court of Appeal for Louisiana, the court did not reform an agreement that did not specify any geographic limitations (*Water Processing Techs., Inc. v. Ridgeway*, 618 So. 2d 533, 536 (La. Ct. App. 1993)).
- A case before the First Circuit Court of Appeal for Louisiana, the court did not reform a non-compete agreement that did not specify any geographic limitations (*Kimball v. Anesthesia Specialists of Baton Rouge*, 809 So. 2d 405, 412-13 (La. Ct. App. 2001)).

Choice of Law Provisions

7. Will choice of law provisions contained in non-competes be honored by courts interpreting non-competes in your jurisdiction?

A choice of law or choice of forum clause is invalid under Louisiana law unless the employee knowingly and willingly ratifies the provisions after the incident that is the subject of the dispute (La. R.S. 23:921(A)(2)).

Reasonableness of Restrictions

8. What constitutes sufficient consideration in your jurisdiction to support a non-compete agreement?

Louisiana does not require consideration for a non-compete agreement to be enforceable. However, no contractual obligation can exist without a **lawful cause**, which is a civil law concept similar to the requirement of consideration in common law jurisdictions (La Civ. Code Ann. art. 1966). Cause is defined as “the reason why a party obligates himself” (La Civ. Code Ann. art. 1967). Continued employment is lawful cause sufficient to support an enforceable non-compete or non-solicitation agreement (*Cellular One, Inc. v. Boyd*, 653 So. 2d 30, 34 (La. Ct. App. 1995); *Acadian Cypress & Hardwood Inc. v. Stewart*, 121 So. 3d 667, 672 (La. Ct. App. 2013)). However, Louisiana courts generally focus on whether a non-compete complies with the requirements of La. R.S. 23:921 rather than the existence of lawful cause.

9. What constitutes a reasonable duration of a non-compete restriction in your jurisdiction?

To be enforceable, a non-compete or non-solicitation agreement may only be for a maximum of two years from the employee's termination date (La. R.S. 23:921(C)). Louisiana courts strictly enforce this rule and have voided agreements imposing longer terms (see *Allied Bruce Terminix Cos., Inc. v. Ferrier*, 634 So. 2d 44, 45 (La. Ct. App. 1994)).

10. What constitutes a reasonable geographic non-compete restriction in your jurisdiction?

Under Louisiana law, a geographic restriction in a non-compete or non-solicitation agreement is limited to where the employer engages in a similar or competing business (La. R.S. 23:921(C)). In addition, the agreement must **specifically name** the parishes or municipalities where competition or solicitation is restricted (*Vartech Sys., Inc.*, 951 So. 2d at 258; *Waguespack v. Medtronic, Inc.*, 185 F. Supp. 3d 916, 929 (M.D. La. 2016) (applying Louisiana law)).

In a case before the Fifth Circuit Court of Appeal of Louisiana, the court held that employers do not necessarily need to have a physical presence in a geographic area. Engaging in a business may include advertising and customer solicitation (*H2O Hair v. Marquette*, 960 So. 2d 250, 259-60 (La. Ct. App. 2007)).

The court in that case also held that including Orleans Parish in the non-compete's geographic scope was enforceable because:

- A substantial portion of the employer's customers reside in Orleans Parish.
- The employer solicits customers in Orleans Parish.

(*H2O Hair*, 960 So. 2d at 259-60.)

Additionally, in a case before the First Circuit Court of Appeal for Louisiana, the court stated that the geographic scope of a non-compete must be limited to areas where the employer actually has a location or customers and not just a blanket list of all Louisiana parishes, therefore preventing an employer from locking former employees out of markets where the employer does not operate (*Vartech Sys., Inc.*, 951 So. 2d at 258). However, the court appeared to imply that the employer engaged in business wherever it had a customer and enforced the agreement because the defendants, when claiming that the geographic scope was overbroad, did not present evidence:

- Showing that the employer did not operate in parishes outside of its only known location in East Baton Rouge Parish.
- Establishing the location of the employer's customers.

(*Vartech Sys., Inc.*, 951 So. 2d at 258.)

11. Does your jurisdiction regard as reasonable non-competes that do not include geographic restrictions, but instead include other types of restrictions (such as customer lists)?

Louisiana law requires all non-compete and non-solicitation agreements to include geographic restrictions. State courts void agreements that do not adequately identify a geographic area. In one case before the First Circuit Court of Appeal for Louisiana, the court voided a non-compete agreement which stated that the geographic scope was "any health care facility regularly serviced" by the employer. The court held that the language failed to adequately identify the covered parishes, counties, or municipalities as required by La. R.S. 23:921(C) (*Kimball*, 809 So. 2d at 411-13).

The Second and Fifth Circuits of the Courts of Appeal for Louisiana have followed the First Circuit's reasoning in that decision (see *Vartech Sys., Inc.*, 951 So. 2d at 260-61; *Action Revenue Recovery, L.L.C. v. eBusiness Grp., L.L.C.*, 17 So. 3d 999, 1003-04 (La. Ct. App. 2009); *Bell v. Rimkus Consulting Grp., Inc. of La.*, 983 So. 2d 927, 933-34 (La. Ct. App. 2008)).

12. Does your jurisdiction regard as reasonable geographic restrictions (or substitutions for geographic restrictions) that are not fixed, but instead are contingent on other factors?

The Louisiana circuit courts are currently split on whether the geographic scope of the agreement must be fixed or can be based on factors that change over the course of an employee's employment.

The Third and Fourth Circuits have enforced agreements that contained geographic scopes which were identifiable using information outside the written agreement. For example, in:

- One case before the Third Circuit Court of Appeal for Louisiana, the court upheld a non-compete agreement that specified the geographic scope as "the parishes in which [the employer] carries on a like business" (*Petroleum Helicopters, Inc. v. Untereker*, 731 So. 2d 965, 968 (La. Ct. App. 1999)).
- Another case before the Third Circuit Court of Appeal for Louisiana, the court upheld an agreement that stated that the non-compete is limited to parishes where the employee has performed work for the employer (*Allied Bruce Terminix Co., Inc. v. Guillory*, 649 So. 2d 652, 653 (La. Ct. App. 1994)).

- A case before the Fourth Circuit Court of Appeal for Louisiana, the court upheld a non-compete where the geographic restriction was within any parishes where the employer operated when the employee was terminated (*Dixie Parking Service, Inc. v. Hargrove*, 691 So. 2d 1316, 1320-21 (La. Ct. App. 1997)).

In addition, in a case before the US District Court for the Eastern District of Louisiana, the court upheld a non-compete agreement that specified that the agreement was limited to the parishes or municipalities listed where the employer completed activities in Louisiana (*Porter v. Milliken & Michaels, Inc.*, 2001 WL 617184, at *3 (E.D. La. June 5, 2001) (applying Louisiana law)).

However, in a case before the First Circuit Court of Appeal for Louisiana, the court held that the geographic scope of the non-compete or non-solicitation agreement must be ascertainable from the face of the agreement without reference to any other information. The court voided a non-compete agreement where the employee could not compete within a six mile radius of the clinic's locations, stating that the employee had no way of knowing where the clinics would be located in the future when the agreement was executed. (*Garcia v. Banfield Pet Hospital*, 35 So. 3d 261, 265 (La. Ct. App. 2010).)

13. If there is any other important legal precedent in the area of non-compete enforcement in your jurisdiction not otherwise addressed in this survey, please identify and briefly describe the relevant cases.

Geographic Restrictions

An agreement is not expressly required by the language of La. R.S. 23:921 to identify the geographic limitation by explicitly listing the name of the parish or municipality. However, most Louisiana courts do not enforce non-competes unless the parishes and municipalities are named and void agreements where the geographic limitation is determined by a radius from a certain point (see *Aon Risk Servs.*, 807 So. 2d at 1061).

For example, in a case before the Louisiana Supreme Court, the court reinstated the trial court judgment which held that a non-compete agreement with a geographic scope containing a 75-mile radius from a municipality was overly broad. The trial court severed and removed the language referring to the 75-mile radius while keeping the language that identifies parishes and municipalities. (*AMCOM of La. Inc. v. Battson*, 670 So. 2d 1223 (La. 1996).)

Employer's Business

Louisiana courts may void agreements that prevent an employee from competing in a business that is not similar to that of the employer. For example, in a case before the First Circuit Court of Appeal for Louisiana, the court voided an agreement where the employee could not carry on or engage in a business "similar to that of the employer," because the employer failed to describe the nature of its business in the agreement (*LaFourche Speech & Language Servs.*, 652 So. 2d at 680-81).

However, in a case before the Second Circuit Court of Appeal for Louisiana, the court enforced a non-compete agreement that did not contain a specific definition of the employer's business. The court compared the employer's business with the employee's new employer and held that they were similar enough to warrant enforcement of the non-compete (*Ticheli v. John H. Carter Co., Inc.*, 996 So. 2d 437, 440-41 (La. Ct. App. 2008)).

Strict Construction

Louisiana courts hold that non-competition agreements must be strictly construed against the employer (*SWAT 24*, 808 So.2d at 298). In addition, if the terms of an employment and non-compete agreement provide for a one year employment term followed by a two year non-compete period and the employee stays with the company past the one year term, absent a change to the employment agreement, the agreement must be strictly construed to mean that the non-compete begins to run after the one year period (*Gulf Indus., Inc. v. Boylan*, 2014 WL 3611820, at *4 (La. Ct. App. June 6, 2014)).

Attempts to Enforce Unlawful Non-Compete Agreements

Courts have recognized that attempting to enforce an unlawful non-compete or non-solicitation agreement against an employee can expose the employer to liability under the Louisiana Unfair Trade Practices and Consumer Protection Law (*Boudreaux v. OS Rest. Servs., L.L.C.*, 2015 WL 349558, at *4 (E.D. La. Jan. 23, 2015) (applying Louisiana law)).

Remedies

14. What remedies are available to employers enforcing non-competes?

Non-Compete Laws: Louisiana

Under Louisiana law, individuals who violate a non-compete or non-solicitation agreement may be liable to an employer for:

- Damages for the employer's:
 - lost revenue; and
 - lost profit.
- Injunctive relief.

(La. R.S. 23:921(H).)

To measure lost profits, a court must consider:

- Net loss (gross profits minus expenses), which must be proven with reasonable certainty.
- If there is no direct evidence to determine the amount lost because of the breach, customary or foreseeable profit.

(*Arthur J. Gallagher & Co.*, 703 F.3d at 293.)

There must be a reasonable basis for making any projections of lost future profits, for example, the business' past performance (*Arthur J. Gallagher & Co.*, 703 F.3d at 293-95).

15. What must an employer show when seeking a preliminary injunction for purposes of enforcing a non-compete?

Under Louisiana law, employers may obtain injunctive relief without showing irreparable harm from an employee's failure to comply with a non-compete or non-solicitation agreement. Employers only need to show that the employee has breached the agreement. (La. R.S. 23:921(H); *Vartech Sys., Inc.*, 951 So. 2d at 255; *Clear Channel Broad., Inc. v. Brown*, 901 So. 2d 553, 557 (La. Ct. App. 2005).) This does not apply if the employer seeks to enforce an agreement that does not:

- Fall under the statutory exceptions in La. R.S. 23:921, which specifies categories of enforceable non-compete or non-solicitation agreements.
- Comply with La. R.S. 23:921(C).

(*Green Clinic, L.L.C. v. Finley*, 30 So. 3d 1094, 1100 (La. Ct. App. 2010).)

Other Issues

16. Apart from non-competes, what other agreements are used in your jurisdiction to protect confidential or trade secret information?

Louisiana employers routinely use confidentiality agreements in addition to non-compete agreements to protect confidential information. Unlike non-compete agreements, there:

- Are no specific statutory guidelines that these agreements must follow.
- Is no public policy disfavoring confidentiality agreements.

17. Is the doctrine of inevitable disclosure recognized in your jurisdiction?

Louisiana courts have not discussed or adopted the concept of inevitable disclosure. However, a federal district court interpreting Louisiana law concluded that restricting an employee's freedom to practice a trade based on the doctrine of inevitable disclosure violates Louisiana public policy (*Standard Brands, Inc. v. Zumpe*, 264 F. Supp. 254, 264-65 (E.D. La. 1967) (applying Louisiana law)).

Therefore, it is best practice for employers to not rely on the doctrine of inevitable disclosure to prevent employees who had access to confidential information from going to work for a competitor.

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