Non-Compete vs. Non-Solicit Agreements: Key Considerations for Pennsylvania Lawyers

March 26, 2026

Pittsburgh, PA

The Legal Intelligencer

(by **Steve Silverman** and **Katerina Vassil**)

Employers wanting to protect their trade secrets and goodwill often ask counsel to include restrictive covenants in their employment agreements to limit departing employees from harming them in future employment. Two of the most common include non-competition (non-compete) and non-solicitation (non-solicit) provisions, which are often thought to be equally enforceable. In practice, these restrictive covenants are not interchangeable and not equally enforceable, which is why familiarity with the client's business interests and precise drafting are both essential. A recent Pennsylvania Superior Court decision serves as a primer on restrictive covenants and provides valuable insight into Pennsylvania courts' historical handling of non-compete and non-solicit agreements, with one noteworthy deviation from years of established case law.

On February 18, 2026, in *First Nat. Trust Co. v. English et al.*, No. 1109 WDA 2025 (Pa. Super. Feb. 18, 2026), the Pennsylvania Superior Court issued a non-precedential opinion that serves as a one-stop shop for all things Pennsylvania restrictive covenant law. The Court breaks down the requirements for enforceable non-competes and non-solicits, what constitutes adequate consideration to support employment agreements, and the standards for obtaining injunctive relief, as well as more nuanced issues like the meaning of the term "solicit" and the use of non-acceptance provisions.

The primary focus of the opinion, however, is on non-competes and non-solicits and their limitations. Non-competes restrict a former employee's ability to work for a competitor or start a competing business within a specific time frame and geographic area. Courts are hesitant to uphold non-compete agreements that overly restrict an employee's ability to engage in work opportunities within their profession. But non-compete agreements will be upheld so long as they are of reasonable duration, geographic scope, and necessary to protect legitimate business interests. If a non-compete agreement is overly broad and fails to address legitimate protectible business interests, courts will often refuse to enforce them. Similarly, if the geographic scope is overinclusive, courts will likely strike, or in some instances, rewrite the non-compete as an unfair restriction on the former employee.

Conversely, non-solicit agreements allow ex-employees to work for competitors but restrict them from soliciting customers and clients of the former employer for a specified time period. Non-solicits do not typically include explicit geographic limitations, because these implicitly exist based on where the specific customers or clients are located. If customers and clients are scattered in various locations, an explicit geographic limitation could make the non-solicit agreement overly restrictive and provide insufficient protection for the former employer. Instead, because a non-solicit provision identifies a definitive and finite set of business contacts that the former employee is prohibited from contacting or soliciting, such a provision is already limited in geographic scope to exclusively where those specific business contacts are.

As a matter of public policy, courts are reluctant to limit employees' future employment as an unfair restraint on trade. For that reason, courts often closely examine an employer's right to enforce a restrictive covenant before doing so. Generally, courts have been more likely to enforce non-solicit clauses than non-competes because non-solicit agreements, by definition, pose less restrictions on the employee's ability to work in their chosen profession. Theoretically, an employee could begin working right next door to their former employer without violating the non-solicit agreement so long as they don't bring the employer's customers or confidential business information along with them. It is simply easier to convince a judge that an ex-employee can still earn a living and yet honor his or her non-solicit obligations than it is with a non-compete that may force that employee to move across the country to continue working in their field.

Historically, it has been easier for employers to meet the legal requirements of a non-solicit than a non-compete because non-solicits have typically involved less stringent requirements. For example, an employer enforcing a non-compete must show that the geographic restriction is reasonable, justified, and not overly broad, but an employer enforcing a non-solicit need not prove any of those elements since no geographic restriction was required. Instead, that employer must be able to specifically identify which clients and customers his ex-employee can no longer solicit business from and then justify that restriction. But enforcing a non-solicit provision can also have its own challenges, such as clearly defining and proving what is and is not considered a "solicitation."

In *First Nat. Trust Co. v. English et al.*, the Superior Court threw in another twist – a new requirement that non-solicits must include reasonable geographic limitations to be enforceable. The Court reviewed the trial court's determination that the non-solicit provision in the employment agreement at issue lacked geographic confines, ultimately agreeing that the provision unduly restricted movement in long-term relationships. If relied on by other courts, this would make non-solicit agreements far more complicated to draft to ensure their enforceability. Employers would be forced to make difficult decisions: either include a broad geographic scope in their non-solicits to guarantee capturing an entire customer base that could not be solicited or self-edit to limit those customers by limiting the geographic scope of the provision to avoid overreaching that would render the provision unenforceable. Even more significant, this requirement could invalidate countless employment agreements containing non-solicits without geographic restrictions.

Notably, the Superior Court relies on *Pittsburgh Logistics Systems, Inc. v. Beemac Trucking, LLC*, a case decided by the Pennsylvania Supreme Court in 2021 concluding that restrictive covenants are only enforceable if the restrictions are reasonably limited geographically. This reliance is misplaced, as *Beemac* exclusively addresses the geographic scope of non-compete agreements and is silent on geographic limitations for non-solicits. Thus, the Superior Court's conclusion that the non-solicit clause is unenforceable as written due to the lack of geographic limitation appears to be in error. A geographic restriction requirement in non-solicits could force attorneys to identify the location of every customer the employer-client seeks to prohibit the employee from soliciting. This could also require these agreements to be regularly updated, raising issues of additional consideration and enforceability. Besides impracticability, this could significantly increase the employer's legal expenses and potentially throw judicial review of these provisions into disarray. For those reasons, hopefully other courts will see that in this particular instance, the Superior Court simply misspoke when noting that a non-solicit must also have a geographic restriction to be enforceable.

When enforcing restrictive covenants, courts seek to strike a balance between protecting an employer's legitimate business interests and limiting unfair restrictions on an employee. Requiring geographic limitations in non-solicits guarantees an imbalance that contradicts this exact objective – whether it be overinclusive or underinclusive, non-solicit agreements cannot include explicit geographic limitations while maintaining adequate protections for both employer and employee. Ultimately, employers must seek to strike a balance by utilizing narrowly tailored restrictive covenants that ensure enforceability to protect their legitimate protectible business interests.

In *First Nat. Trust Co.*, the Superior Court also addressed the use of "non-acceptance" provisions, which restrict an employee's ability to accept business from customers or potential customers that the employee had contact or involvement with during their employment. Non-acceptance provisions restrict a former employee from accepting business even if the former employee does not initiate contact or affirmatively solicit the customer or client or if the customer seeks out the employee directly to continue the business relationship. For example, a non-acceptance provision in a non-solicit agreement would prohibit an employee from accepting business from a customer or client that contacts or seeks out the employee directly to continue their business relationship. The use of non-acceptance provisions has increased over the last few years, as they provide protection for employers. In *First Nat. Trust Co.*, however, the Superior Court determined that the trial court properly concluded that the non-acceptance provision was overly broad because it restricted pre-existing customers, family, and friends of former. The lesson is clear: non-acceptance provisions should be drafted carefully to avoid overbreadth that may render them unenforceable, keeping in mind that business relationships that predate the employment at issue may be exempt from such provisions.

Steve Silverman is a shareholder in the Litigation and Employment and Labor groups of Babst Calland. Mr. Silverman devotes a significant amount of his practice to the defense and prosecution of theft of trade secrets and non-compete suits. Contact him at 412-253-8818 or ssilverman@babstcalland.com.

Katerina Vassil is an associate in the Litigation Group of Babst Calland. Ms. Vassil represents clients in a variety of litigation practice areas, including commercial, energy and natural resources, environmental, and employment and

labor. Contact her at 412-394-6428 or kvassil@babstcalland.com.

To view the full article, **click here**.

Reprinted with permission from the March 26, 2026 edition of *The Legal Intelligencer*© 2026 ALM Media Properties, LLC. All rights reserved.