Non-Solicitation vs. Non-Compete Agreements: When to "Employ" One, the Other, or Both

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Employers who want to protect their trade secrets and goodwill can use several types of restrictive covenants to limit departing employees from harming them in future employment. Two of the most common are non-competition (non-compete) and non-solicitation (non-solicit) provisions that can be included in employment agreements. These provisions are often confused by employers and thought to be equally enforceable, but in practice they are not. The following addresses the differences between these two types of restrictions, their respective limitations on enforcement, and why an employer may want to use one over the other, or even both.

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. Non-compete agreements are 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 identify legitimate business interests to be protected, courts will often refuse to enforce them. A reasonable geographic scope limitation is essential to a non-compete because of the nature of the business interest that the agreement seeks to protect.

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-solicit agreements do not typically include explicit geographic limitations. Instead, geographic limitations implicitly exist in non-solicit agreements based on where the specific customers or clients are located. If these customers and clients are scattered in various locations, an explicit geographic limitation could make the non-solicit agreement overly restrictive and provide insufficient protections for the former employer. Instead, because a non-solicit provision identifies a definitive and finite set of business contacts that the 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 often reluctant to limit employees' future employment as an unfair restraint on trade. For that reason, courts will often closely examine an employer's right to enforce a restrictive covenant before doing so. But generally, courts are more likely to enforce non-solicit clauses than non-competes. By definition, non-solicit agreements 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 and would not violate 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 plying his or her trade.

Overall, it is also easier for an employer to meet the legal requirements of a non-solicit than a non-compete. For instance, an employer enforcing a non-compete must show that the geographic restriction is reasonable, justified and not overly broad. An employer enforcing a non-solicit, however, need not prove any of those elements since no geographic restriction is 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." Hopefully, good drafting of that provision by an experienced attorney will adequately address that issue. Additionally, the non-solicit should include a "non-acceptance" clause prohibiting the employee from accepting business from those clients or customers who initiate contact with the employee first.

Some employers may want to use a “belt and suspenders” approach by utilizing both non-compete and non-solicit provisions in their employment agreements. The thought being if one is not enforceable, then the other may be. The downside is that some courts that invalidate one may think there is overreaching in trying to enforce the other. Typically, whether to utilize both types of provisions depends on the unique needs of the employer and the particular threats posed by the employee given the nature of their position. For instance, it will be easier to enforce both provisions against a C-Suite employee than it will against a salesperson.

A recent case illustrates the differences between non-competes and non-solicits and yet may also throw some of these distinctions for a loop. On February 18, 2026, the Pennsylvania Superior Court issued a non-precedential opinion in *First Nat. Trust Co. v. English et al.*, No. 1109 WDA 2025 (Pa. Super. Feb. 18, 2026), which is in essence a one-stop shop for all things Pennsylvania restrictive covenant law, with analysis and application of the Pennsylvania courts’ historical handling of non-compete and non-solicit agreements. However, the Superior Court included a deviation from years of established case law on non-solicit principles by saying that non-solicits need a geographic limitation to be enforceable.

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. Just as significantly, this requirement could invalidate literally tens of thousands of current employment agreements containing non-solicits without geographic restrictions. In drafting non-solicits with added geographic restrictions, attorneys could be forced to identify the location of every customer the employer-client seeks to prohibit the employee from soliciting. This would also require these agreements to be regularly updated, raising issues of additional consideration and enforceability. Besides impracticability, this would 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.

The bottom line is that employers must weigh the potential risks versus potential rewards in deciding whether to bind their employees to non-compete or non-solicit provisions, or even both. Regardless, the ultimate goal is to strike a balance by using those restrictive covenants that protect the employer’s legitimate protectible interests that are narrowly tailored enough to be enforceable.

If you have questions about the use of non-competes or non-solicit agreements under existing state law or how to properly enforce them, please contact Steve Silverman at 412-253-8818 or **ssilverman@babstcalland.com** or Katerina Vassil at 412-394-6428 or **kvassil@babstcalland.com**.