

Non-Compete Laws: Kentucky

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On 4/23/24, the FTC issued a final rule banning most non-competes effective 120 days after publication in the Federal Register. We will monitor the issue and update resources as necessary. For updates, see [Non-Compete Agreements with Employees](#).

A Q&A guide to non-compete agreements between employers and employees for private employers in Kentucky. 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. Answers 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

Kentucky has not adopted a state statute governing non-compete agreements.

Industry- or Profession-Specific Statute or Regulation

Lawyers: KY ST RPC Rule 3.130(5.6)

KY ST RPC Rule 3.130(5.6) governs non-compete agreements in the legal industry.

Health Care Services Agency: KRS 216.724

KRS 216.724 governs non-compete agreements between a health care services agency and temporary direct care staff contractors or employees. It does not apply to contracts with either:

- Permanent direct care staff.
- An assisted living community, long-term care facility, or hospital for the placement of permanent direct care staff.

(KRS 216.724.)

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

Kentucky has not adopted a state statute governing the enforcement of non-compete agreements.

Industry- or Profession-Specific Statute or Regulation

Lawyers: KY ST RPC Rule 3.130(5.6)

A lawyer cannot participate in offering or making:

- A partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement on benefits at retirement.
- An agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.

(KY ST RPC Rule 3.130(5.6).)

The commentary to KY ST RPC Rule 3.130(5.6) states that:

- An agreement restricting the right of partners or associates to practice after leaving a firm limits:
 - their professional autonomy; and
 - the freedom of clients to choose a lawyer.
- The rule does not prohibit restrictions that are part of the terms of a sale of a law practice under KY ST RPC Rule 3.130(1.17).

Health Care Services Agency: KRS 216.724

A health care services agency cannot restrict the employment opportunities of its temporary direct care staff contractors or employees, specifically including the use of non-compete clauses (KRS 216.724(1)(a)).

A health care services agency is any person or business engaged in referring temporary direct care staff to deliver temporary direct care services to:

- An assisted-living community.
- A long-term care facility.
- A hospital.

(KRS 216.718(6).)

The one exception is for a health care services agency operated by an assisted-living community, long-term care facility, or hospital, or one of their affiliates, for the sole purpose of staffing that facility and its affiliates (KRS 216.718(6)).

- Temporary direct care staff are those individuals who contract with or are employed by a health care services agency to provide direct care services to residents in assisted living communities, residents in long-term care facilities, or patients in hospitals for either:

- an undefined duration; or
- a duration of less than 24 continuous months exclusive of any extension.

(KRS 216.718(4), (9).)

Any contract that contains a clause in violation of KRS 216.724(1)(a) is:

- An unfair trade practice.
- Void as an illegal contract.

(KRS 216.724(2) and 365.060).

Common Law

In Kentucky, an employee's covenant not to compete with an employer or former employer is enforceable if it is:

- Valid.
- Reasonable in:
 - duration;
 - geographic scope; and
 - purpose.

(See *Louisville Cycle & Supply Co., Inc. v. Baach*, 535 S.W.2d 230, 232 (Ky. 1976); *Hall v. Willard & Woolsey P.S.C.*, 471 S.W.2d 316, 317-18 (Ky. Ct. App. 1971).)

Agreements on restraint of trade, including non-compete agreements, are reasonable and enforceable if, considering the subject and nature of the business, the situation of the parties, and the circumstances of the case, the restriction:

- Only affords fair protection to the interests of the covenantee, usually the employer, with particular regard to the employer's investments in the employee.
- Is not so large that it interferes with the public interest or imposes undue hardship on the restricted party.

(*Hammons v. Big Sandy Claims Serv., Inc.*, 567 S.W.2d 313, 315 (Ky. Ct. App. 1978); *Material Handling Sys., Inc. v. Cabrera*, 572 F. Supp. 3d 375 (W.D. Ky. 2022); *Borg-Warner Protective Servs. Corp. v. Guardsmark, Inc.*, 946 F. Supp. 495, 501 (E.D. Ky. 1996).)

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.

Kentucky courts enforce non-compete agreements “unless very serious inequities would result” (*Lareau v. O’Nan*, 355 S.W.2d 679, 681 (Ky. Ct. App. 1962); see Question 2: Common Law).

In *Calhoun v. Everman*, the court stated that contracts in restraint of trade, including non-compete agreements, are unenforceable when they are unlimited in:

- Both time and space.
- Space but limited in time.

(242 S.W.2d 100, 102 (Ky. Ct. App. 1951).)

However, contracts in restraint of trade that are unlimited in time but confined to a reasonable territory are enforceable (*Calhoun*, 242 S.W.2d at 102). A court also may have equitable authority to determine a reasonable geographic restriction where there is not one in the agreement (*Hodges v. Todd*, 698 S.W.2d 317, 319 (Ky. Ct. App. 1985); see Question 11).

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

When seeking injunctive relief to enforce a non-compete covenant under Kentucky law, the movant has the burden of proof. A movant for a temporary injunction must demonstrate by specific facts shown by verified complaint, affidavit, or other evidence that the movant both:

- Has rights that the adverse party is violating or will violate.
- Will suffer immediate and irreparable injury, loss, or damage pending final judgment, or the adverse party’s acts will tend to render any final judgment ineffectual.

(Ky. R. Civ. P. 65.04(1).)

An applicant for a restraining order must demonstrate by specific facts shown by verified complaint or affidavit that the applicant both:

- Has rights that the adverse party is violating or will violate.
- Will suffer immediate and irreparable injury, loss, or damage before the adverse party or their attorney can be heard in opposition.

(Ky. R. Civ. P. 65.03(1).)

The Kentucky Rules of Civil Procedure provide that no temporary injunction or restraining order will be granted unless the applicant gives a bond:

- With surety.
- For the sum that the court or the officer deems proper.
- For the payment of costs and damages that any person who is wrongfully restrained or enjoined may incur.

(Ky. R. Civ. P. 65.05(1).)

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

Non-compete covenants are enforceable in Kentucky if the employer terminates the relationship (see *Hammons*, 567 S.W.2d at 314-15). A court considers the circumstances of the termination when determining whether the covenant is enforceable (see *Higdon Food Serv., Inc. v. Walker*, 641 S.W.2d 750, 752 (Ky. 1982)).

Non-compete covenants signed after employment begins are enforceable if both:

- The employer continues to employ the employee for an appreciable length of time after the employee signs the covenant.
- The employee voluntarily resigns.

(*Central Adjustment Bureau, Inc. v. Ingram Assocs., Inc.*, 622 S.W.2d 681, 685 (Ky. Ct. App. 1981).)

The court in *Central Adjustment Bureau* expressed no opinion about whether a non-compete signed after employment begins is enforceable when the employer unilaterally and involuntarily terminates the employment relationship (622 S.W.2d at 685).

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?

Kentucky courts have the authority to modify or blue pencil the terms of a covenant not to compete and to enforce it as modified (*Keigel v. Tillotson*, 297 S.W.3d 908, 913 (Ky. Ct. App. 2009)). Under Kentucky law, the courts can enforce a non-compete covenant for a reasonable period and area if the temporal or geographic scope is too expansive (see *Hodges*, 698 S.W.2d at 319).

Choice of Law Provisions

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

No reported Kentucky decision addresses this specific issue. However, Kentucky courts generally cite and follow the Restatement (Second) of Conflict of Laws § 188 in deciding general contract cases (see *Schnuerle v. Insight Commc'ns Co.*, 376 S.W.3d 561, 567 (Ky. 2012)).

In an unpublished case, the Kentucky Court of Appeals held that a choice of law provision is presumptively valid and will only be unenforceable if there is a strong showing that:

- The choice of law clause itself is the result of misconduct.
- The chosen forum would deprive a party of their day in court.
- The enforcement of the clause would contravene strong public policy.

(*Calihan v. Power Mktg. Direct, Inc.*, 2007 WL 625125, at *4 (Ky. Ct. App. Mar. 2, 2007).)

Reasonableness of Restrictions

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

A Kentucky employer's act of good faith hiring constitutes sufficient consideration to support a non-compete agreement (*Higdon*, 641 S.W.2d at 751). Continued employment alone is not sufficient consideration to support enforcement of a non-compete agreement demanded after the employee has already been employed for a significant amount of time. Promotion or specialized knowledge, training, and expertise can be sufficient consideration. (*Charles T. Creech, Inc. v. Brown*, 433 S.W.3d 345, 354 (Ky. 2014).)

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

Kentucky courts have enforced non-compete agreements that last as long as five years (see *Lareau*, 355 S.W.2d at

680). For example, the Kentucky Court of Appeals upheld a non-compete agreement that lasted five years and extended 50 miles (*White v. Sullivan*, 667 S.W.2d 385, 386 (Ky. Ct. App. 1983)). However, a trial court found a restriction lasting five years over an area of 350 miles to be unconscionable and void as against public policy. The appellate court returned the case to the trial court for additional discovery on the issue. (*Kegel*, 297 S.W.3d at 913.)

For more information on the general standards Kentucky courts rely on for enforcement of non-compete agreements, see Question 3.

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

Kentucky courts have enforced non-compete agreements covering the entire US where the employer's business was also national in scope (*Central Adjustment Bureau*, 622 S.W.2d at 686). Kentucky courts have also enforced geographic restrictions of:

- 200 miles (*Hammons*, 567 S.W.2d at 315).
- 50 miles (*Hall*, 471 S.W.2d at 318-19).

For more information on the general standards Kentucky courts rely on for enforcement of non-compete agreements, see Question 3.

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)?

Kentucky courts have enforced non-compete covenants that do not contain a specific geographic scope. The Kentucky Supreme Court upheld a covenant not to compete contained in an employment agreement that restricted competition "within any regularly routed area of sales and services of [the employer]" (*Higdon*, 641 S.W.2d at 751-53).

The Kentucky Court of Appeals held that, where there is a mutuality of obligation between the parties, a trial court could enforce a non-compete covenant that did not specify its geographic range by taking evidence on what would constitute a reasonable geographic restriction (*Hodges*, 698 S.W.2d at 319-20).

For more information on the general standards Kentucky courts rely on for enforcement of non-compete agreements, see Question 3.

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?

Kentucky courts have enforced non-compete covenants that do not contain a specific geographic scope. The Kentucky Supreme Court upheld a covenant not to compete contained in an employment agreement that restricted competition “within any regularly routed area of sales and services of [the employer]” (*Higdon*, 641 S.W.2d at 751-53).

For more information on the general standards Kentucky courts rely on for enforcement of non-compete agreements, see Question 3.

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.

The Kentucky Supreme Court ruled that a law firm’s non-compete agreement that required lawyers to agree to refrain from soliciting non-legal business but contained a savings clause exempting the solicitation of legal work from the prohibition:

- Did not violate KY ST RPC Rule 3.130(5.6), which prohibits attorneys from agreeing to restrict their right to practice after termination of employment.
- Was not grounds for a wrongful termination claim by an attorney who was terminated for refusing to sign the agreement on the mistaken belief that it violated the rules of professional conduct.

(*Greissman v. Rawlings & Assocs., PLLC*, 571 S.W.3d 561, 568 (Ky. 2019).)

Remedies

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

Kentucky parties generally can contract for pretrial injunctive relief under the Kentucky Rules of Civil Procedure, as well as other provable damages at trial.

For example, in *Daniel Boone Clinic, P.S.C. v. Dahhan*, the trial court enforced a non-compete covenant in an employment agreement barring a physician from practicing medicine within 50 miles of three specifically named towns for 18 months. The trial court refused to enforce a \$75,000 liquidated damages clause in the same agreement, but the appellate court enforced both provisions. (734 S.W.2d 488, 490-91 (Ky. Ct. App. 1987).)

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

When seeking injunctive relief relating to enforcement of a non-compete covenant in Kentucky, the movant generally has the burden of proof.

An applicant for a restraining order must demonstrate by specific facts shown by verified complaint or affidavit that the applicant both:

- Has rights that the adverse party is violating or will violate.
- Will suffer immediate and irreparable injury, loss, or damage before the adverse party or their attorney can be heard in opposition.

(Ky. R. Civ. P. 65.03.)

A movant for a temporary injunction must demonstrate by specific facts shown by verified complaint or affidavit or other evidence that both:

- The movant has rights that the adverse party is violating or will violate.
- The adverse party’s acts will:
 - cause the movant to suffer immediate and irreparable injury, loss, or damage pending final judgment; or
 - tend to render any final judgment ineffectual.

(Ky. R. Civ. P. 65.04.)

A Kentucky trial court must deny a motion for temporary injunctive relief unless it finds that:

- The movant’s position presents a substantial question on the underlying merits of the case.
- The movant’s remedy will be irreparably impaired absent the extraordinary relief.
- An injunction will not be inequitable.

(*Gharad v. St. Claire Med. Ctr., Inc.*, 443 S.W.3d 609, 611 (Ky. 2014).)

Other Issues

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

Kentucky has adopted the Uniform Trade Secrets Act (KRS 365.880 to 365.900). The UTSA protects employers' trade secrets from misappropriation by former employees even in the absence of a confidentiality agreement or non-compete. For more information on trade secret laws in Kentucky, see [State Q&A, Trade Secret Laws: Kentucky](#).

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

No reported decision by a Kentucky state court addresses the issue of inevitable disclosure. In *Invesco Institutional (N.A.), Inc. v. Johnson*, a federal district court declined to adopt the doctrine in a Kentucky case, stating that the inevitable disclosure doctrine "has not been approved by any Kentucky court or the Sixth Circuit" (500 F. Supp. 2d 701, 710 (W.D. Ky. 2007)).

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