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RESEARCH: NON-COMPETE AGREEMENTS

Franchise Non-Compete Agreements: Court Cases

[H&R Block vs. Vorpahl](#), 2003 (Wisconsin)

I. Background

Vorpahl operated a franchise of H&R Block in Wisconsin preparing tax returns until December 31, 2002. The non-compete clause of his franchisor-franchisee agreement prohibited him from competing in the business of preparing tax returns within 45 miles of the franchise territory or any other H&R Block franchise location for a period of 1 year following termination of the agreement.

II. Choosing between Wisconsin statute and common law analysis

- Implications: full vs. partial enforcement
- Wis. Stat. § 103.465

A covenant by an assistant, servant or agent not to compete with his or her employer or principal during the term of the employment or agency, or after the termination of that employment or agency, within a specified territory and during a specified time is lawful and enforceable only if the restrictions imposed are reasonably necessary for the protection of the employer or principal. Any covenant, described in this subsection, imposing an unreasonable restraint is illegal, void and unenforceable even as to any part of the covenant or performance that would be a reasonable restraint.

- Judge determined that the franchisee did not qualify as an “assistant, servant or agent” of H&R Block and noted that the legislature could easily have included the term “franchisee” in the statute but chose not to.
- Cited *Wilkinson v. Manpower, Inc.*, which decided that the Wisconsin statute only applies to employment relationships.

III. Decision

Under common law, the judge determined that the requirements prohibiting competing within 45 miles of the franchise territory for a period of 1 year was reasonable, and therefore the sections of the contract that stipulated these requirements were valid and enforceable.

[H & R Block, Inc. v. Lovelace](#) (1972), Kansas

I. Background

This case was appealed to the Supreme Court of Kansas by the franchisor. The agreement between franchisor and franchisee prohibited Lovelace from competing in the tax return business for a period of 5 years after its termination but did not specify a geographic scope. Lovelace terminated his agreement with H&R Block in 1968 and began operating a tax return business under his own name in the same spot as he had previously operated an H&R Block franchise in 1969. The previous trial court had decided in favor of the defendant, concluding that the lack of specified geographic scope indicated the intent to limit competition from anywhere in the world for the period of 5 years and that this qualified as unreasonable under state common law.

II. Decision

The judge affirmed the trial court decision not to enforce the agreement due to unreasonableness.

[California Pizza Kitchen, Inc. v. Mangual](#) (2000), California

- I. “The court reaffirmed the broad application of Section 16600, striking down a noncompete clause in a franchise agreement due to its potential to limit economic opportunities within the pizza industry.”

Health Care Non-Compete Agreements: State Laws

Pennsylvania: Fair Contracting for Health Care Practitioners Act

- Effective January 1, 2025
- Intent
 - To facilitate patient access to health care by regulating consolidated hospital systems' ability to enforce non-compete agreements on health care practitioners, thereby increasing competition in the industry that is beneficial to both employees and patients.
- Declares non-compete covenants entered into after effective date void and unenforceable with limited exceptions:
 - The covenant not to compete must not last longer than 1 year
- Notification of patients is required if they have been seeing the practitioner for 2 consecutive years or more of these facts:
 - That the practitioner is leaving the employer
 - That the patient may choose to receive care from that practitioner or another and how to transfer their health records
 - That the patient can choose to continue to receive care from the employer and be assigned to another practitioner within that employer

New Mexico: 24A-4-2. Enforceability of a non-compete provision; other provisions void.

- A non-compete provision in an agreement is enforceable upon the termination of
 - The agreement
 - A renewal of the agreement
 - A healthcare practitioner's employment with a party seeking to enforce the non-compete
- A non-compete provision is unenforceable if it is subject to the laws of another state or requires litigation in another state.

Kentucky: 216.724 Restrictions on health care services agency -- Contracts.

- Restricts non-competes only for temporary direct care staff

Connecticut: [§ 20-14p](#). Covenants not to compete involving physicians

- Effective July 1, 2023
- Party seeking to enforce a non-compete agreement has the burden of proof
- To be enforceable a covenant not to compete must
 - Be necessary to protect a legitimate business interest
 - Be reasonable in time, geographic scope and practice restrictions necessary to protect that business interest

- Be otherwise consistent with the law and public policy
- Imposes reasonable restrictions on enforceable non-competes
 - Duration: no more than 1 year
 - Geographic scope: no more than 15 mile radius

Acts passed in 2024

Illinois: Freedom to Work-Exceptions

- Passed January 2024
- Noncompetes for licensed professionals who provide mental health services to veterans and first responders are unenforceable if they were signed after January 1, 2025 and enforcing the noncompete is likely to cause an increase in cost or difficulty for any veteran or first responder seeking mental health services.

Iowa:

- An Act relating to and making appropriations for veterans and health and human services, including other related provisions and appropriations, and including effective date and retroactive applicability provisions
- Passed April 2024
- Healthcare technology platforms may not restrict the employment opportunities of independent nursing professionals through a noncompete clause. The provision is part of a bill dealing with a range of state medical and human services programs.

Louisiana:

- Effective 1/1/2025, noncompetes restricting primary care physicians from practicing medicine will expire three years from the effective date of the agreement. Any subsequent agreements or renewals may not include a noncompete. If the employment relationship is terminated within three years, the scope of the noncompete must be limited to two years in duration and to the parish in which the practice is located, as well as up to two contiguous parishes.

Maryland:

- Noncompetes affecting veterinarians and healthcare professionals licensed under the Health Occupations article who work in direct patient care and make less than \$350,000 annually are void whether or not the agreement was signed within the state. For healthcare professionals providing direct patient care and earning more than \$350,000, noncompetes are limited in scope to one year from termination of the relationship and ten miles from the primary place of employment.