

Non-Compete Clause Quiz

written by Rory Lodge | April 28, 2020



Is a Non-Compete Clause Enforceable?

SITUATION

A foreign exchange broker signs a contract with a brokerage firm that includes a promise not to engage in any competitive business anywhere in Canada for 18 months after he leaves the firm. The non-compete also bans him from soliciting the firm's clients after he's gone. The firm is headquartered in Edmonton, but does business across the entire country. It relies on its client list and goodwill for continued sales. After working at the firm for a little over four years, the broker resigns and goes to work for a competing firm that has its HQ in Calgary. Although he doesn't solicit them, a few of his clients follow him to the new firm. The old firm sues the broker for violating the non-compete.

QUESTION

Is the non-compete enforceable?

- A. Yes, because it's a legal document signed by the employee and firm
- B. Yes, as long as the agreement is reasonable in scope, duration and geography
- C. No, because anti-competes are *per se* illegal violations of public policy and free competition
- D. No, because a non-compete can't last more than 12 months

ANSWER

B. The agreement is enforceable as long as it's not overbroad in its scope, duration and geography

EXPLANATION

The basic rule: Although courts generally frown upon non-competes, they will uphold them as long as the geographic area, duration and type of business activity they cover are reasonable. Courts have to address the question of reasonableness case by case on the basis of the circumstances involved.

WHY WRONG ANSWERS ARE WRONG

A is wrong because, employees and employers *aren't* always bound by everything they sign. Agreements may be unenforceable if they violate public policy. Accordingly,

courts often refuse to uphold non-competes to the extent they believe the agreement unreasonably stifles competition or interferes with an employee's right to earn a living.

C is wrong because the only *per se* rule about non-competes is that there are no *per se* rules. Despite being inherently anti-competitive, non-competes, *are* enforceable to the extent companies have legitimate business assets to protect (such as a hard-earned client list) and the non-compete protects those assets in a reasonable manner.

D is wrong because while the duration of a non-compete must be reasonable, there are no hard and fast rules about what length of time is and is not reasonable.