

# Legal Connections



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## Q & A: NON-COMPETES AS AN EMPLOYEE

**Q. Are non-competes really enforceable?** In almost all states, yes. Unlike most contracts, where contracting parties are free to make a bad bargain, courts will review non-competes to determine if they are reasonable. But people who assume a non-compete is unenforceable may be in for a rude surprise.



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**Q. How do states' rules differ?** In two important ways: first, what a court does with a non-compete can be overly broad. In some states, such as Ohio, the court will in effect rewrite the contract to "make it reasonable." Other states are less helpful to the enforcing employer and may simply strike some or all of the restriction.

Secondly, an Ohio employee doesn't need to receive anything of value, besides the right to come to work tomorrow, in exchange for a non-compete. In other states, a non-compete signed in the middle of an employment relationship will not be enforceable unless the employer gave the employee something of value in exchange for it.

**Q. So what is reasonable for an employer to put in a non-compete?** There is no easy answer. One year is often viewed as a reasonable time period. Longer non-competes may be enforceable, especially for higher level employees or employees with access to critical information.

With regard to other aspects of the non-compete, such as geographical or activity

limitations, courts will often look at whether the limitations approximate what the employee was actually doing for the employer. For example, an employer may not be able to restrict an employee from competing in Michigan if the employee's job duties had nothing to do with Michigan.

**Q. What happens to the non-compete if you are fired?** In most states, including Ohio, the non-compete is still enforceable. But in determining what is a reasonable restriction on the employee, a court may consider the circumstances of the employee's departure.

**Q. What happens to the non-compete if the company is purchased by another entity?** This is another area where the answer may vary state to state. In Ohio, a non-compete may be assigned from one company to another in the event of an acquisition. However, courts will usually examine whether the non-compete has language that put the employee on notice of this possibility.

**Bottom Line:** There are a lot of moving parts, and whether you are the employer or the employee, you probably need experienced counsel to help you understand the many possible scenarios to interpret an agreement.



Lawyers foster a better understanding of the law and our civic responsibilities. Attend our first Constitutional Conversations event to learn more about the Separation of Powers Doctrine and its foundation in current events.

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### MARRIAGE TERMINATED: DIVORCE VS. DISSOLUTION

**W**hen a potential client sits down for an initial consultation, one of the most common questions is the difference between a divorce and a dissolution. Both a divorce and a dissolution result in the same outcome – the marriage is terminated. The fundamental difference between the two is a divorce is contested and filed with the court; whereas a dissolution is filed jointly once the parties reach an agreement. In a divorce, the parties are required to appear at court multiple times for procedural and pretrial proceedings. If the parties cannot reach an agreement, a decision is determined by a judge. In a dissolution, the parties file a Separation Agreement outlining the terms of their settlement, and only need to appear at court once (or not at all if they hire a private judge) to briefly testify as to their desire to end the marriage in accordance with the terms of their agreement.

Clients also want to know whether a dissolution is less time consuming and costly than a divorce. Since divorces by their very nature are contested, they often involve conflict, increased time and expense. Typically, a dissolution takes less time (and therefore may be less expensive); however, that is not always the case. Both parties must willingly participate to move it to conclusion.

The decision to file for divorce or pursue a dissolution is case specific. It is both a personal and often strategic decision. As such, parties should carefully weigh their options after seeking the advice of counsel.



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**Constitutional conversations**  
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