

Non-Compete and Non-Solicitation Agreements for Photographers

Many members look for “non-compete” agreements that they can present to their employees. Please be aware that state laws on covenants not to compete vary widely. In fact, such agreements are prohibited in some states as an unlawful restraint of trade. In other states, there are restrictions on when an employer may present such an agreement to an employee and, in certain situations, it may be necessary to pay employees additional compensation for signing an agreement. **SAA recommends that you consult with a local attorney before asking anyone to sign a non-compete or non-solicitation agreement.**

Non-compete agreements generally contain three key restrictions: specific business activity related to the employee’s duties, territorial limits, and a specific time period. Non-solicitation agreements are similar except that they generally restrict activities in regard to certain clients of the business.

Sample Non-Compete Language

Employee agrees that he or she will not engage in the business of _____ (restricted activity) within _____ (geographic limitation) for a period of _____ (time limitation) following termination of their employment. This clause shall be effective regardless of the reason for the termination of employment.

Sample Non-Solicitation Language

Employee agrees not to solicit any customer of (STUDIO NAME) with whom they have contact during their course of employment for _____ (services offered by the studio) services for a period of _____ (time limitation) following termination of their employment. This clause shall be effective regardless of the reason for the termination of employment.

Even in states where these agreements are legal, an overly aggressive approach in drafting the terms of the agreement can cause it to be unenforceable. Indeed, while courts in some jurisdictions will modify an agreement in order to make it enforceable, others will invalidate the entire agreement even if just one portion of it is considered unenforceable.

Most courts review non-compete agreements by asking whether the agreement is designed to protect the legitimate business interests of the employer without unduly burdening the employee. Generally, the more specific you can be regarding the prohibited business activity, the shorter the period of restriction, and the smaller and more specific the geographic area, the better your chances of success.

This document is provided to members of the Stock Artists Alliance for general information purposes and shall not be considered legal advice. SAA strongly recommends that photographers contact local counsel to determine the enforceability of any non-solicitation or non-compete agreement.