NON-COMPETE AGREEMENTS:
A Quick Summary[1]

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History:

At early common law covenants not to compete were void as against public policy. In those days, a person could not pursue a trade or craft without being apprenticed. Once apprenticed, a covenant not to engage in that trade, especially in a non-mobile society, would effectively deny a person the ability to earn a living and would make him a public charge.

Evolution:

The rule has been substantially modified so that today a non-competition agreement will be enforced if a) It is supported by consideration, b) It is ancillary to a lawful arrangement such as an employment contract, and c) It is reasonable under multifaceted tests fashioned by the courts. Therefore, both parties must gain something from the agreement limiting competition and it must be linked to another Agreement like an employment contract.

Key Principles Explaining What is "Reasonable":

1. Agreements not to compete are restraints on trade and thus are not favored.

2. The employer bears the burden of showing that
   a. the restraint is reasonable and
   b. no greater than necessary to protect its legitimate business interests.

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[1] This article is based on Virginia law. Most states are very similar but you should check your own state law to be sure

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3. The restraint must not be unduly harsh or oppressive in curtailing the employee's legitimate efforts to earn a living.

4. The restraint must be reasonable in light of sound public policy.

5. Finally, the language of the agreement will be strictly construed and, if in any way ambiguous, it will be construed in favor of free competition and against the employer.

Whether restrictive agreements in an employment contract will be enforced depends upon the specific facts in each case.

.Some Other Related Issues:

Confidentiality Agreements

Even without a non-competition agreement, a former employee cannot compete with his former employer by using confidential information or trade secrets obtained from the former employer while he worked there.

Trade secrets

Trade secrets can be anything: finances, methods of production, customer lists etc. Anything that gives the user an independent economic advantage over the non-user. The simple acquisition of a trade secret can violate the law if you know it was acquired improperly or if you disclose it w/o permission, (covers former employees using it) or if you acquire it by accident or mistake and know it[2]. Trade secrets can be protected for as long as secrecy is maintained. Therefore the employer must use "reasonable efforts" to keep it secret. This is very fact specific and the courts will look at case-by-case situations.

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[2] But the "inevitable disclosure" doctrine limits employee without non-compete agreements if it is inevitable that s/he must use trade secrets to do new job.

Interference with Contracts or Business

Either deliberate or negligent (careless) interference with existing contracts, prospective contracts, or current employees' willingness to work for you can violate the law.

Unfair Competition

Unfair competition includes many different types of fraudulent, deceptive, and dishonest trade practices. The law's purpose in limiting competition is to protect a business's investment in distinguishing itself and its image, to preserve the good will it has has with customers, to deter a business from appropriating the good will of a competitor, to promote clarity and stability by encouraging consumers to rely on a merchant's good will and reputation, and to increase competition.

Non-solicitation Agreements

Virginia Courts will enforce a signed agreement not to solicit business from the clients of the former employer for a reasonable period of time. Like non-competition agreements, non-solicitation agreements are analyzed under the same principles of fairness to both sides.