

## Hypothetical One: Non-Competition Agreement (Laura DelCamp)

Table 1 vs. Table 3

Sam Smith started working for Office Superstore as a sales associate in 2010 after graduating college. Smith worked at the Concord store helping customers. In May 2013, Smith was promoted to an account representative responsible for selling office supplies to businesses in Concord and the surrounding communities. Later that year, Office Superstore was purchased by PaperPlus. In July 2013 PaperPlus notified all account reps that they would be required to sign a non-competition agreement if they wanted to keep their job. The non-competition agreement prohibited all account representatives from working for any other office supply store in New Hampshire for a period of 24 months after the employee left the PaperPlus for any reason. Smith signed the agreement to keep his job. Six months later, Smith received an offer to work for PaperPlus' main competitor for significantly more money selling office supplies to businesses in Manchester and the surrounding towns. PaperPlus has come to you to enforce the non-competition agreement.

What are the top five problems you see with the PaperPlus' case?

1. **Includes new customers**/not limited to current and former customers
2. **Geographic scope**/covers all of NH
3. **24 month duration** is too long
4. **RSA 275:70/no change in job**: In 2013 statute prohibited requiring e'ee to sign a non-compete if there was no change in job/position in the company
5. **Overbroad** because it applies even if employee is laid off

RSA 275:70: July 2012-July 2014 applied to all e'ees who were offered a new position. After 2014 applies only to new employee. Agreement must be given to e'ee before or contemporaneous with the offer. Some courts have applied the 2012-2014 statute to non-competes issued during that time frame.

Test for validity of non-compete:

1. must protect legitimate interest of e'er: must involve exploitation of good will, misuse of confidential info., or other interest
2. undue hardship on e'ee: ?
3. against public policy: ?

Courts can narrow agreement so long as e'er did not act in bad faith