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With a roster of practice areas unrivaled in the region, WAW focuses on building long-term partnerships with its clients by offering sophisticated services more typical of firms in larger metropolitan areas. Each of the attorneys at WAW brings several areas of extraordinary experience and skill to the practice of law, allowing us to maintain a dynamic, flexible firm structure. The breadth of our experience and our cooperative culture enable us to offer our clients the sophistication and expertise of a larger firm, while retaining the responsiveness and efficiency of a smaller firm. Our goal is to provide our clients with the highest quality of service in the most cost-effective manner.

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Note About the Author

Jill M. Lowell is a member of WAW's litigation team and has extensive experience in the field of employment law. She counsels employers on a broad range of issues including compliance with state and federal discrimination, leave, and disability laws. She also drafts employment and severance agreements, and advises companies on how to avoid potential costly litigation when downsizing.



For more information on topics contained in the WAW Business Law Briefings, contact Ms. Lowell at (540) 438-5330 or send an email to jlowell@wawlaw.com.

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WAW Business Law Briefings

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The Art of Drafting Non-Competes

Drafting non-competition provisions in employment and separation agreements is a fine art, and painting with a broad brush will leave you with nothing more than an unenforceable restraint on trade. In drafting a non-compete, an employer must focus on three main issues:

1. Is the restraint, from the standpoint of the employer, reasonable in the sense that it is no greater than necessary to protect a legitimate business interest of the employer?
2. From the standpoint of the employee, is the restraint reasonable in the sense that it is not unduly harsh and oppressive in curtailing his legitimate efforts to earn a livelihood?
3. Is the restraint reasonable from the standpoint of public policy?

Typically, to satisfy the first two prongs, the covenant must be limited to business or professional activities that compete directly with

the employer and should describe with specificity what types of businesses or activities the employee would be prohibited from engaging in, in order to determine whether the prohibited businesses are competitors. If the language precludes a broader range of activities than is necessary to protect the employer's business interests, the non-competition provision will not be enforceable if challenged in a court of law. The covenant should also be limited in geographic scope and duration. However, there is no "magic" geographic radius or time limit to ensure that the covenant will be valid; rather it is a fact intensive inquiry, and what is found to be a reasonable restraint on trade in one circumstance, may not be reasonable in another.

With respect to the third requirement, whether a covenant is reasonable from the standpoint of public policy, a major consideration is whether the community will be denied access to a necessary service and whether there are reasonable

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Should Your Company Use Time Clocks for Exempt Employees?

If your company does not require exempt employees to "punch" a time clock everyday, you may want to re-evaluate your policy. While the FLSA does not require hourly time records for exempt employees, it may be in your company's best interest to keep them. In the event an employee challenges his or her exempt status and wins, the employer will be liable for unpaid overtime wages. Without records of hours worked weekly, the employer may have a difficult time disproving the employee's representation of hours worked. Moreover, requiring exempt employees to track time worked does not result in a loss of the

exemption. Of course, there may be administrative or cost related considerations that override the possible risk of an FLSA overtime violation, but an employer should, at a minimum, undertake an analysis to determine which approach is the best fit. programs and early retirement programs, which give employees a sense of control over their future. Of course, employees who feel like their employer really worked with them and implemented alternatives are much less likely to sue than those who were involuntarily terminated - thus decreasing potential litigation costs for the employer.