BOUNDARIES FROM HOME: NON-COMPETE AGREEMENTS IN A WORK FROM HOME ERA

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I. INTRODUCTION

American citizens have constantly worked to provide for themselves and their families, and how they have worked has shifted over time. The COVID-19 pandemic caused much of the workforce to pivot quickly to change how work was done due to the shutdowns that occurred.[1] Many states created temporary policies to keep employees out of the shared office spaces, therefore requiring people to begin conducting their work from their own homes.[2]

Non-compete agreements have been present in America since the twentieth century.[3] These agreements aim to restrict what a former worker can do once they terminate employment with an employer.[4] Geographical restraints are restrictions that may be put in place to limit the area where a former employee can find their next employment.[5] There is controversy surrounding non-compete agreements, and the Federal Trade Commission has proposed rules to outright ban them.[6]

The American workforce's migration to online jobs has created an issue concerning the scope of geographic non-compete agreements. A possible issue could arise when a person works at a job that is headquartered in a different state than their home state. The virtual workspace makes it more difficult to determine what an appropriate geographical restriction is or is not. Technically, those who are job searching can now look for work located anywhere in the world while never leaving their own home.

The work from home situation can leave remote employees signing non-compete agreements that make them agree to geographic limits, time limits, and

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1. *CDC Museum COVID-19 Timeline*, CDC: DAVID J. SENCER CDC MUSEUM: IN ASS'N WITH THE SMITHSONIAN INST. (July 8, 2024), https://www.cdc.gov/museum/timeline/covid19.html.

2. *Id.*

3. United States v. Addyston Pipe & Steel Co., 85 F. 271, 271 (6th Cir. 1898).

4. *Non-Compete Agreements: Friend or Foe?*, 7 ILL. BUS. L.J. 50, 50 (2019).

5. *See 5 Things You Need to Know About Non-Compete Agreements*, THOMSON REUTERS (Mar. 11, 2022), https://legal.thomsonreuters.com/en/insights/articles/the-basics-of-non-compete-agreements.

6. *FTC Announces Rule Banning Noncompetes*, FED. TRADE COMM'N (Apr. 23, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-announces-rule-banning-noncompetes.

restrictions on the type of job after their employment relationship has ended. A non-compete agreement that has geographic limits could create an issue when remote workers are figuring out where the geographic restriction originates. To combat this issue, state non-compete statutes should be reformed for remote work. Geographic limits, if specified in the non-compete contract, should have to be detailed in writing at the time of the contract.

This comment will begin by explaining exactly what a non-compete agreement is and how it can affect the workforce. Second, it will discuss the history and the development of non-compete agreements. Third, it will discuss the geographical restrictions of non-compete agreements in the traditional workplace. It will then move to discuss the shift from an in-person work environment to a work-from-home environment due to the COVID-19 pandemic. Finally, it will discuss geographic non-compete agreements in a work-from-home setting, and why the laws on non-compete agreements should be rewritten to allow courts to rewrite ambiguous language and provide a clear choice of law provision.

II. OVERVIEW OF NON-COMPETE AGREEMENTS

Non-compete agreements are entered into between an employer and an employee.[7] The agreements aim to restrict what employees can do once they leave their current position.[8] The parties are agreeing "not to compete with each other for a certain time period in a particular geographic location."[9] The most common version of a non-compete agreement restricts an employee from leaving a business to go work for a competitor business for a certain time period or within certain geographic bounds.[10] Non-compete agreements can be used to protect trade secrets or other confidential business information.[11] This comment will focus on the geographic bounds of a non-compete agreement. Geographic restrictions for a non-compete agreement restrict the area that a person may be able to work in after their employment relationship ends. Remedies that can be offered by a non-compete agreement are either damages or an injunction.[12]

Suits involving non-compete agreements come to court in the form of breach of contract claims.[13] To prove a breach of contract, the plaintiff must show that there was a contract, the contract was breached, and there were damages sustained from the breach.[14] Typically, employers are the ones who bring these suits to court.[15]

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7. *Non-Compete Agreements: Friend or Foe?*, *supra* note 4, at 50.

8. *Id.*

9. MARK A. ROTHSTEIN ET AL., EMPLOYMENT LAW 829 (6th ed. 2019).

10. Kayla Lya Pfeifer, Comment, *Don't Lose the Remote: An Employer's Guide to Remote Employee and Trade Secret Retention Without Non-Competes*, 75 MERCER L. REV. 955, 964 (2024).

11. Ranger Env't Servs. LLC v. Foehl, 2023 WL 6931336, at *1, *6 (S.D. Ala. 2023).

12. *Non-Compete Agreements: Friend or Foe?, supra* note 4, at 53.

13. *See* Phone Connection, Inc. v. Harbst, 494 N.W.2d 445, 445 (Iowa Ct. App. 1992); Raimonde v. Van Vlerah, 325 N.E.2d 544, 544 (Ohio 1975).

14. Res. Point LLC v. Addolux LLC, 2018 WL 45797225, at *1, *2 (Mich. Ct. App. 2018); Stoken v. J.E.T. Elecs. & Tech., Inc., 174 N.W.2d 389, 463 (Mich. Ct. App. 1988).

15. *See Phone Connection, Inc.*, 494 N.W.2d at 445; *Raimonde*, 325 N.E.2d at 544.

After the introduction of non-compete agreements to the United States, states have developed their own ways of handling these controversial agreements.[16] The legality of a non-compete agreement is left up to the discretion of an individual state's lawmakers.[17] Historically, non-compete agreements and their legality have not been determined by the federal government.[18]

Non-compete agreements are often guided by the "rule of reasonableness."[19] Simply put, this means non-compete agreements being enforced need to be reasonable.[20] States have different approaches to doing this, which stem from the consideration of a business's legitimate interests and the scope of the agreement's effects on the employee.[21] Another commonly used rule to control non-compete agreements is referred to as the "blue pencil rule."[22] This rule allows a non-compete agreement to be changed by a court if it was originally too restrictive, thus allowing it to be permissible in the end.[23] It is up to the states to decide what rule to use when dealing with non-compete cases.[24]

The Restatement (Second) of Contracts § 188 addresses non-compete agreements.[25] It says that a non-compete agreement that "imposes a restraint that is ancillary to an otherwise valid transaction or relationship" is unreasonable if the restraint is greater than necessary in the protection of the business's interest and the need of the business is "outweighed by the hardship to the promisor and the likely injury to the public."[26] This means that the geographic limit of a non-compete agreement must be deemed to be reasonable by the court. What constitutes "reasonable" is factually sensitive depending on the nature of the work being done. There are times when a fifty-mile restriction could be appropriate or times where a nationwide ban could be appropriate.

The period where a person is looking for a job should be considered a vulnerable time. When one finally gets a job offer, they may be blinded by the excitement of getting a new job, instead of properly reading and understanding the employment contracts they are signing as part of their onboarding documents. This often leaves the new employee agreeing to these non-compete agreements without careful consideration.[27] An employer may try to take advantage of the new hire in their vulnerable state.[28] Therefore, courts must evaluate non-compete agreements

16. *Non-Compete Agreements: Friend or Foe?, supra* note 4, at 51.

17. *Id.*

18. Pfeifer, *supra* note 10, at 966.

19. *Non-Compete Agreements: Friend or Foe?*, *supra* note 4, at 52.

20. *Id.*

21. Licocci v. Cardinal Assocs., Inc., 445 N.E.2d 556, 561 (Ind. 1983); Bridgestone/Firestone, Inc. v. Lockhart, 5 F. Supp. 2d 667, 683 (S.D. Ind. 1998).

22. *Non-Compete Agreements: Friend or Foe?, supra* note 4, at 52.

23. *Id.*

24. Pfeifer, *supra* note 10, at 966; *See* Raimonde v. Van Vlerah, 325 N.E.2d 544, 549 (Ohio 1975).

25. ROTHSTEIN ET AL., *supra* note 9, at 832; RESTATEMENT (SECOND) OF CONTS.: ANCILLARY RESTRAINTS ON COMPETITION § 188 (A.L.I. 1981).

26. ROTHSTEIN ET AL., *supra* note 9, at 832; RESTATEMENT (SECOND) OF CONTS. § 188.

27. *Non-Compete Agreements: Friend or Foe?, supra* note 4, at 50.

28. *Id.* at 52.

based on their perceived reasonableness or have the ability, using the blue pencil rule, to change the agreement to make it reasonable.

A. Early Non-Compete Agreements

Evidence shows that non-compete agreements have been present since the 1400s.[29] A foundational case for this area is from the Chancery Courts of England, *Mitchel v. Reynolds* from 1711.[30] In *Mitchel*, the defendant in the case leased a bakery to the plaintiff for five years.[31] Within the agreement, there were terms that restricted the defendant from becoming a baker within the area during the five-year term of the lease.[32] The agreement further stated that if the defendant acted as a baker in conflict with the agreement, he shall pay the plaintiff fifty pounds in order to void the obligation.[33] Here, the Court ruled that the restriction of competition for the five-year time period and the designated geographical area was permissible.[34] Further, the non-compete agreement can create a monopoly of a certain trade if the agreement does not specify a specific person or location, but this was not the case in *Mitchel*.[35] In this case, the restriction was tied to the defendant and only for five years during the term of the lease.[36] The court ruled that this restriction of competition for the five-year time period and the designated geographical area was permissible.[37] They reasoned that the defendant could continue to work as a baker after the lease had ended.[38] Thus, the non-compete agreement was a part of the lease itself.[39]

Even at the inception of non-compete agreements, there was evidence of discourse surrounding their scope and enforceability.[40] People were concerned that non-compete agreements would make it more difficult to transfer property and "goodwill," which can be understood as the business's reputation.[41] Non-compete agreements could be more challenging to agree on since they allow one party to restrict another party's actions, therefore making the contract harder to agree to.

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29. Alexander T. MacDonald, *The FTC's Ahistorical Attack on Noncompetes*, THE FEDERALIST SOC'Y (Jan. 24, 2023), https://fedsoc.org/commentary/fedsoc-blog/the-ftc-s-ahistorical-attack-on-noncompetes.

30. Mitchel v. Reynolds (1711) 24 Eng. Rep. 347, 347 (Ch.).

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.* at 350.

35. *Id.* at 351.

36. *Id.* at 352.

37. *Id.* at 352.

38. *Id.*

39. *Id.* at 350.

40. *Non-Compete Agreements: Friend or Foe?*, *supra* note 4, at 51.

41. *Id.*

B. Early Non-Compete Agreements in the United States

Non-compete agreements have long been a part of the American commerce business since they can be viewed to promote efficiency within the workforce.[42] Here, the efficiency mentioned means the protection of confidential work information, including both clients and trade secrets.[43]

One of the first examples of American antitrust law comes from the case *United States v. Addyston Pipe & Steel Co.* in 1899.[44] This case concerned Section I of the Sherman Act, which addresses contracts that restrained trade.[45] In the *Addyston Pipe* opinion, Judge Taft wrote that only unreasonable contracts in the restraint of trade should be banned instead of all contracts made in the restraint of trade.[46] Judge Taft wrote that these restrictive contracts are permissible if they are "ancillary to the main purpose of a contract" and if it is necessary in order to protect the promisor in the contract.[47] He further reasoned that the usage of these restrictive contracts would actually benefit competition and the public as a whole.[48] Judge Taft also recognized the possible pitfalls of non-compete agreements, including situations of abuse when the contracts restrain trade more than necessary.[49] The positives and negatives of non-compete agreements that Taft recognized in *Addyston Pipe* are similar to the modern debates surrounding the topic.

C. Modern Non-Compete Agreements

In modern times, non-compete agreements are still very much present in the United States. Approximately one in five workers in this country is bound to a non-compete agreement to carry out their jobs.[50] The usage of non-compete agreements has expanded to include more types of workers than just white-collar ones.

For example, Jimmy John's required their hourly workers, known as "sandwich artists," to sign a non-compete agreement to prevent them from working at a competitor sandwich shop after their employment relationship ends.[51] This agreement lasted for two years and prevented the former employees from working

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42. Lori N. Ross*, The Time Is Now: A Call for Federal Elimination of Non-Competes Against Low-Wage and Hourly Workers in the Wake of the Pandemic*, 14 WM. & MARY BUS. L. REV. 111, 119 (2022).

43. *Id.*

44. United States v. Addyston Pipe & Steel Co., 85 F. 271, 271 (6th Cir. 1898).

45. MacDonald, *supra* note 29.

46. *Addyston*, 85 F. at 278; MacDonald, *supra* note 29.

47. *Addyston,* 85 F. at 283.

48. *Id.* at 281.

49. *Id.*

50. *FTC Announces Rule Banning Noncompetes*, FED. TRADE COMM'N: FOR RELEASE (Apr. 23, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-announces-rule-banning-noncompetes.

51. Clare O'Connor, *Does Jimmy John's Non-Compete Clause for Sandwich Makers Have Legal Legs?*, FORBES (Oct. 15, 2014, at 12:41 ET), https://www.forbes.com/sites/clareoconnor/2014/10/15/does-jimmy-johns-non-compete-clause-for-sandwich-makers-have-legal-legs/.

in any shop that derived more than 10% of its revenue from selling sandwiches in a three-mile radius of any Jimmy John's.[52]

Most state laws require that non-compete agreements be "reasonable."[53] The Jimmy John's non-compete agreements were eventually terminated when they were challenged by the attorneys generals of New York and Illinois.[54] This expansion of the usage of non-compete agreements should be viewed as unreasonable since it restricts hourly employees who do not often have access to sensitive, confidential information.[55]

Non-compete agreements should be reserved primarily for white-collar employees who handle confidential information, such as client records and trade secrets. A frequent ban used for non-compete agreements in many states prohibits employers from using these agreements for "low-wage" or "low-skilled" workers.[56] Many remote employees are "white-collar;" therefore, the geographical restrictions of non-competes are relevant to the remote work landscape.[57]

In July 2021, President Biden signed an Executive Order titled "Promoting Competition in the American Economy."[58] The goal of the order was to motivate the Federal Trade Commission (FTC) to stop the use of non-compete agreements, which he saw as unfair since they can limit an employee's employment opportunities.[59] Through the elimination of non-compete agreements, the American workforce would be considered to be freer, and workers would more easily be able to enter and exit the job market at their own will.[60]

The FTC, in response to President Biden's Executive Order, proposed a rule to ban all non-compete agreements nationwide.[61] If the rule had been enacted, the majority of existing non-compete agreements would no longer have enforcement power.[62] The only type that could remain in force would be for senior executives, which make up a small portion of the workforce affected by non-compete agreements.[63]

The United States District Court for the Northern District of Texas in *Ryan LLC v. FTC* found the proposed FTC rule essentially banning all non-competes to

52. *Id.*

53. *Id.*

54. Karla Walter, *The Freedom to Leave: Curbing Noncompete Agreements to Protect Workers and Support Entrepreneurship*, CTR. FOR AM. PROGRESS (Jan. 9, 2019), https://www.americanprogress.org/article/the-freedom-to-leave/.

55. *Id.*

56. *A Brief History of Noncompete Regulation*, FAIR COMPETITION L. (Oct. 11, 2021), https://faircompetitionlaw.com/2021/10/11/a-brief-history-of-noncompete-regulation/.

57. Lydia Saad & Jeffrey M. Jones, *Seven in 10 U.S. White-Collar Workers Still Working Remotely*, GALLUP (May 17, 2021), https://news.gallup.com/poll/348743/seven-u.s.-white-collar-workers-still-working-remotely.aspx.

58. *Id.*

59. Eric H. Fishman, *Restrictive Covenants at Work: From Employer to Employee*, 7 WAYNE ST. U.J. BUS. L. 89, 98-99 (2024).

60. *FTC Announces Rule Banning Noncompetes*, *supra* note 50.

61. *Id.*

62. *Id.*

63. *Id.*

be an illegal action.[64] Here, the rule was challenged under the Administrative Procedure Act, which allows a court to review actions created by a federal agency.[65] The court found that this FTC rule was unenforceable and overbroad.[66] The rule also did not have a rational connection to the alleged harm it was trying to prevent.[67] Finally, the court's decision left the decision-making up to the state to decide whether or not to use non-compete agreements.[68]

The court's decision in *Ryan LLC v. FTC*, by leaving the regulation of non-compete agreements up to the states, underscores the ongoing debate over their value and validity. The debate surrounding non-compete agreements have strong arguments on both sides, and it is worth examining the pros and cons that shape this landscape.

D. Pros and Cons of Non-Compete Agreements

Non-compete agreements are a controversial topic. Four states, including California, have banned all non-compete agreements.[69] In support of this decision, California says that the banning of non-compete agreements supports open competition and allows employees to freely find their next place of employment.[70] Twelve states have no statutory restrictions on the usage of non-compete agreements, and the courts must determine if the restrictions are reasonable and abide by their contract law rules.[71] Thirty-four states have some restrictions in place, including income restrictions.[72] Some states have restrictions on the use of non-compete agreements in healthcare professions.[73] In states where non-compete agreements are permissible, they are often determined to be enforceable if they are considered to be "reasonable."[74] The reasonableness determination is made by balancing a variety of factors, which include "balancing between the public interest in competition, the employer's legitimate business interest, and the employee's right to pursue her profession."[75] These factors involve balancing both the employer's interests and the employee's rights.[76] It is important to balance the need for the non-compete agreements against the hardship that they can impose on the American workforce.

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64. Ryan LLC v. F.T.C., 746 F. Supp. 3d 369, 389 (N.D. Tex. 2024).
65. *Id.* at 378.
66. *Id.* at 388.
67. *Id.*
68. *Id.* at 389-90.
69. ROTHSTEIN ET AL., *supra* note 9, at 830; CAL. BUS. & PROF. CODE § 16600 (West 2024).
70. ROTHSTEIN ET AL., *supra* note 9, at 830.
71. *State Noncompete Law Tracker*, ECON. INNOVATION GRP. (June 12, 2025), https://eig.org/state-noncompete-map/.
72. *Id.*; WASH. REV. CODE ANN. § 49.62.020 (West 2024).
73. TENN. CODE ANN. § 63-1-148 (West 2024).
74. ROTHSTEIN ET AL., *supra* note 9, at 830.
75. *Id.*
76. *Id.*

Supporters of non-compete agreements believe they are essential to protecting trade secrets within a workplace.[77] When an employee signs a non-compete agreement, they are prohibited from taking information learned or developed during their last position and later sharing it with a future employer, who may be a competitor.[78] Further, to protect from direct competition, an employer can use a non-compete agreement prevent former employees from working with a nearby rival.[79]

Linda M. Khan, FTC Chair, said that "[n]oncompete clauses keep wages low, suppress new ideas, and rob the American economy of dynamism, including from the more than 8,500 new startups that would be created a year once noncompetes are banned."[80] Other arguments against non-compete agreements believe that the elimination of non-compete agreements would allow Americans to have more choices in their future marketplace, as well as create a better market for new ideas.[81] Critics also assess the fact that when people are fired from their current position, the existence of a non-compete agreement makes it more difficult to find a job during an increasingly difficult life period.[82] A restriction from a non-compete agreement could be viewed as just one more obstacle that someone who recently lost their job has to overcome. A majority of small business owners support the banning of non-compete agreements.[83] Small business owners are often the ones who are harmed by the usage of non-compete agreements.[84]

III. GEOGRAPHICAL RESTRAINTS IN TRADITIONAL NON-COMPETE AGREEMENTS

Geographical restraints are one of the most common ways a non-compete agreement will show up in an employment contract.[85] Frequently, these restrictions prevent an employee from working in a similar capacity to the job they had left within a certain mileage from their previous work location and for a certain amount of time after the employment relationship was terminated.[86] The driving goal of these restrictions is to prevent local competitors from getting a skilled employee who has recently terminated their employment with another competitor in the

77. *Non-Compete Contracts: Economic Effects and Policy Implications*, U.S. DEP'T OF THE TREASURY 3 (Mar. 2016), https://home.treasury.gov/system/files/226/Non_Compete_Contracts_Economic_Effects_and_Policy_Implications_MAR2016.pdf.

78. *Id.* at 6.

79. *Id.* at 3. *See generally* Raimonde v. Van Vlerah, 325 N.E.2d 544, 548-49 (Ohio 1975) (explaining that non-compete agreements can be used to protect employer's interests).

80. *FTC Announces Rule Banning Noncompetes*, *supra* note 50.

81. *Id.*

82. Ross, *supra* note 42, at 124.

83. *Opinion Poll: Small Business Owners Support Banning Non-Compete Agreement*, SMALL BUS. MAJORITY (Apr. 13, 2013), https://smallbusinessmajority.org/our-research/fair-competition/opinion-poll-small-business-owners-support-banning-non-compete-agreements.

84. *Id.*

85. *See 5 Things You Need to Know About Non-Compete Agreements*, *supra* note 5.

86. *Id.*

market.[87] Generally, if the area of the non-compete agreement's enforcement is considered to be *too broad* the agreement is less likely to be enforceable.[88] In many non-compete agreements for in-person employment, the geographical area restriction is based on the physical area where the employer is located.[89] This creates a clearly defined area of where a person cannot look for a job after the termination of their employment.

An example of a traditional geographical restriction in a non-compete clause comes from *Raimonde v. Van Vlerah*, which used the rule of reasonableness rather than the traditionally used blue pencil test.[90] The facts of this case concern an employment relationship between two veterinarians working in a small town.[91] The appellee veterinarian was hired by the appellant veterinarian and signed a non-compete agreement to not work as a veterinarian for three years in a thirty-mile radius after the commencement of the employment relationship.[92] When the appellee later ended their employment with the appellant, they opened a practice within a thirty-mile radius.[93] This caused the appellant to sue for violating the non-compete agreement.[94]

The court switched to the application of the reasonableness test since it allowed them to create a reasonable contract for the parties that took into account their intentions at the time of contracting, and also required them to be reasonable in doing so.[95] It was assumed by the court that employers going into these non-compete agreements would do so in good faith to protect their legitimate interests.[96] It is a factually sensitive inquiry to determine what is reasonable based on the specific circumstances of the business being protected.[97] The court will not enforce a non-compete agreement if it is deemed to hold the former employee to unreasonable restrictions, but the restrictions "will be enforced to the extent necessary to protect the employer's legitimate interests."[98] Under the new reasonableness test, the case was remanded back to a lower court to reconsider the contract with using the new reasonableness rule.[99]

An example of an unenforceable geographical restriction in a non-compete agreement is *Phone Connection, Inc. v. Harbst,* where a non-compete agreement restricted a former incorporator, Harbst, from working in the two neighboring states for five years after his employment ended.[100] After Harbst ended his

87. *See id.*
88. *Id.*
89. *See 5 Things You Need to Know About Non-Compete Agreements*, *supra* note 5.
90. Raimonde v. Van Vlerah, 325 N.E.2d 544, 549 (Ohio 1975).
91. *Id.* at 545.
92. *Id.*
93. *Id.*
94. *Id.* at 546.
95. *Id.* at 546-47.
96. *Id.* at 547.
97. *Id.*
98. *Id.*
99. *Id.* at 548-59.
100. Phone Connection, Inc. v. Harbst, 494 N.W.2d 445, 446 (Iowa Ct. App. 1992); ROTHSTEIN ET AL., *supra* note 9, at 861.

employment relationship with the other incorporators, he started his own company that was a direct competitor to the Phone Connection, Inc.[101]

Phone Connection, Inc. is from Iowa, so their state laws on non-compete agreements guide. The court here used a three-prong test to determine if the non-compete agreement should be enforced.[102] The first prong asks is "the restriction reasonably necessary for the protection of the employer's business."[103] The second prong asks if the non-compete agreement is "unreasonably restrictive of the employee's rights."[104] The third prong asks if the non-compete agreement is "prejudicial to public interest."[105]

The court found that the non-compete agreement satisfied the first prong since it was reasonably necessary for the protection of the business.[106] There were only three "principal" employees in the entirety of the Phone Connection, Inc., Harbst being one of them.[107] All of these principal employees had access to all important and confidential company information.[108] Therefore, it is necessary to protect business interests to enforce the non-compete agreement.[109]

Second, the non-compete agreement was originally found to be "unreasonably restrictive of the employee's rights."[110] Therefore, at the district court level, the court modified the existing non-compete agreement to make it less restrictive of Harbst's rights.[111] The court considered Harbst's family, whom he did not want to move in order for him to work.[112] The district court believed that the existing agreement preventing Harbst from working in the phone industry in the neighboring two states was too restrictive.[113] The district court modified the non-compete agreement so it was not too restrictive; they did this by making the non-compete agreement only apply to the counties in the two states where the Phone Connection, Inc. services are provided.[114] The time period was also dropped from five years to two years.[115] The district court made these modifications so it would be fair to Harbst while protecting the Phone Connection, Inc.'s business concerns.[116]

The final prong asked if the non-compete agreement was prejudicial to the public.[117] The court found that the non-compete agreement fulfilled this

101. *Phone Connection, Inc.*, 494 N.W.2d at 447.
102. *Id.* at 449 (quoting Lamp v. Am. Prosthetics, Inc., 379 N.W.2d 909, 910 (Iowa 1986)).
103. *Id.*
104. *Id.*
105. *Id.*
106. *Id.*
107. *Id.*
108. *Id.*
109. *Id.*
110. *Id.*
111. *Id.* at 447.
112. *Id.* at 449.
113. *Id.* at 447.
114. *Id.*
115. *Id.*
116. *See id.* at 450.
117. *Id.* at 449.

requirement since customers were able to be serviced easily by other service providers.[118] Therefore, the court found the non-compete agreement and its modification to be "reasonable and enforceable."[119]

The *Phone Connection, Inc.* case is an example of how a court can intervene to make a non-compete agreement that was too restrictive become compliant and reasonable to the employee.[120] Non-compete agreements are found to be too restrictive if they are too broad in terms of the geographic scope and time limit.[121] In order to protect a business's important interests, the court is able to modify an existing non-compete agreement.[122] The modification of non-compete agreements by courts is an appropriate way for courts to ensure that an employee's rights are not unduly prejudiced. People have a right to work where they please to some extent, while still respecting why a business may want safeguards to prevent direct competition or a former employee using confidential information against them.

Often, businesses enter into non-compete agreements to protect their company. They do not want a previous employee to be able to use information learned in their position to benefit a competitor.[123] The *Raimonde* case can also be viewed as a reasonable application of a non-compete agreement geographic limitation since the goal was to avoid direct competition in their town.[124]

In these traditional cases, it is easy to understand exactly where the geographical limit for the non-compete agreement is. It is a clear distance from the physical office space. Now, this question becomes foggy as people have been shifting to remote work.

IV. SHIFT TO REMOTE WORK STRENGTHENED BY THE COVID-19 PANDEMIC

Work has shifted drastically throughout our relatively short American history.[125] What has been consistent is Americans working in their homes in some capacity.[126] There were times when it was more common for employers to provide housing for their employees.[127] Small business owners frequently lived in buildings that also housed their businesses: think of a general store on the bottom floor of a building, and the shopkeeper and their family live upstairs.[128] There is also another category of *at-home workers*, these workers complete their jobs in the homes of others. An example of this is house cleaning.[129] The 1960s brought

118. *Id.*

119. *Id.* at 450.

120. *See id.* at 449-50.

121. *Id.* at 449 (first citing Pathology Consultants v. Gratton, 343 N.W.2d 428, 434 (Iowa 1984); and then Ehlers v. Iowa Warehouse Co., 188 N.W.2d 368, 373-74 (1971)).

122. *See id.* at 449-50.

123. *Non-Compete Contracts: Economic Effects and Policy Implications*, *supra* note 77, at 3.

124. Raimonde v. Van Vlerah, 325 N.E.2d 544, 549 (Ohio 1975).

125. *See* Hilary Silver, *Working from Home: Before and After the Pandemic*, CONTEXTS, Winter 2023, at 66, 66.

126. *Id.*

127. *Id.*

128. *Id.* at 67.

129. *Id.*

cubicles, which is a feature many people think of when imagining a typical office building.[130] As the increase of these office spaces rose, there was a decrease seen in the typical "work from home" forms.[131] Office jobs have now become a more typical way of American life.[132]

Early evidence of remote work in the sense we know it now can be traced back to the 1980s and 1990s.[133] This is around the time the technology increased and improved, so people would be able to work outside of the office space. Therefore, the idea of remote work is not entirely new.

In March of 2020, the work-life of Americans had to quickly pivot.[134] COVID-19 was declared a worldwide pandemic, and in order to mitigate the spread of infectious disease, states began to shut down "non-essential" public spaces, which included many shared office spaces.[135] This pushed employers to require their employees to work their normal office jobs from their own homes.[136]

American citizens have continued the trend of working from home.[137] It has been estimated that one in five workers complete their job duties from their home address.[138] From this continuing trend, it could be assumed that many companies have begun to adopt a flexible work-from-home policy for their employees.[139]

Several companies have embraced the new work-from-home culture, such as Airbnb's "Live and Work Anywhere" policy.[140] In 2022, CEO Brian Chesky announced a policy that would allow employees to have the full choice of whether they choose to work from home or in the traditional office space setting.[141] Chesky reasoned that not requiring an office space would expand the job pool to include more people than ever before therefore leading Airbnb to have a diverse applicant pool and move towards becoming a more diverse company.[142] The Chief Financial Officer, Dave Stephenson, said that, "[t]he best talent in the world is not all within a 50-mile radius of San Francisco."[143] Compensation will not depend on

130. Kelsey Hansen & Anne Noyes Saini, *A Brief History of the Modern Office*, HARV. BUS. REV. (July 15, 2020), https://hbr.org/2020/07/a-brief-history-of-the-modern-office.

131. Silver, *supra* note 125, at 66.

132. *See id.*

133. Hansen & Saini, *supra* note 130.

134. *CDC Museum COVID-19 Timeline*, *supra* note 1.

135. *See* Silver, *supra* note 125, at 66.

136. *See id.*

137. *See* Robert Half, *Remote Work Statistics and Trends for 2025*, ROBERT HALF (May 30, 2025), https://www.roberthalf.com/us/en/insights/research/remote-work-statistics-and-trends.

138. Katherine Haan, *Top Remote Work Statistics and Trends*, FORBES: ADVISOR (June 12, 2023), https://www.forbes.com/advisor/business/remote-work-statistics/.

139. *Id.*

140. Orly Lobel, *Remote Law: The Great Resignation, Great Gigification, Portable Benefits, and the Overdue Reshuffling of Work Policy*, 63 SANTA CLARA L. REV. 1, 6 (2022); Andrea Hsu, *Airbnb Let Its Workers Live and Work Anywhere. Spoiler: They're Loving It*, NPR: BUSINESS (Apr. 28, 2023, at 13:49 ET), https://www.npr.org/2023/04/28/1172213330/airbnb-hybrid-remote-work-from-home-office-digital-nomad.

141. *Id.*

142. *Airbnb's Design for Employees to Live and Work Anywhere*, AIRBNB: NEWSROOM (Apr. 28, 2022), https://news.airbnb.com/airbnbs-design-to-live-and-work-anywhere/.

143. Hsu, *supra* note 140.

where an employee's workspace is, which will let employees freely decide where they want to carry out their work duties.[144] Employees are able to work in over 170 countries for up to ninety days.[145] There have been positive business effects from the switch to this new policy.[146] "The business has actually never performed better since we moved to this program," said Stephenson.[147] Other reports reflect that the switch has saved Airbnb money.[148] Employees are happier due to the flexible work arrangement.[149]

The insurance company, Allstate, has moved to a flexible work schedule as well.[150] After polling its employees, 83% of their workers wanted to remain remote.[151] Allstate states that their new policy helps their workspace become more accessible, because there are no barriers for those who have mobility issues.[152] This decision, though, does not single out only those with mobility issues since it allows a flexible work environment for all of its employees.[153] Allstate sold its main headquarters building and donated office items to various nonprofits.[154] This cut spending within the company and allowed them to reallocate money to go towards employees' home offices.[155] Allstate saw an increase in applicants, including diverse applicants, once they went to a remote environment.[156] Stephanie Roseman, the vice president of people solutions and experiences, said that "[a] lot of employees feel empowerment with the ability to work remotely."[157]

Polls have detected that 98% of Americans want the ability to work from home for a portion of their job.[158] Positive consequences are seen from giving employees the ability to work from home.[159] Working from home allows employees more flexibility than was previously permissible in the workplace.[160] Employees can have more time for the "nonwork" aspects of their lives, including families and hobbies.[161] Those who choose to work remotely may now have an

144. *Airbnb's Design for Employees to Live and Work Anywhere*, *supra* note 142.

145. Hsu, *supra* note 140.

146. *See id.*

147. *Id.*

148. *Id.*

149. *Id.*

150. *How Allstate Employees Are Redefining Their Workplace*, ALLSTATE (Apr. 19, 2024), https://www.allstatecorporation.com/stories/flexible-workplace.aspx.

151. Kathryn Mayer, *Allstate on Its Remote Work Policy: 'It's Enabled Us to Find the Best Talent'*, SHRM (Feb. 21, 2023), https://www.shrm.org/topics-tools/news/benefits-compensation/allstate-remote-work-policy-its-enabled-us-to-find-best-talent.

152. *How Allstate Employees Are Redefining Their Workplace*, *supra* note 150.

153. *Id.*

154. *Id.*

155. *Id.*

156. Mayer, *supra* note 151.

157. *Id.*

158. Haan, *supra* note 138.

159. Lobel, *supra* note 140, at 3; Julia Guerrein, *Be Well: Work Balance in the Digital Age*, 50 VT. BAR J. 20, 20 (2024).

160. Lobel, *supra* note 140, at 3.

161. Guerrein, *supra* note 159, at 20.

opportunity to select when they are able to work based on their schedules.[162] This allows employees to take full control over their day and select when and what working hours are best for them.[163] For example, a working parent would be able to arrange their work schedule around their child's activities so the parent could drop the child off at school and later pick them up, and maybe even take them to soccer practice later. An employee who used to have a strict 9-5 work schedule may have had issues scheduling necessary appointments during normal business hours. Remote work allows these employees to be more flexible in their ability to schedule these appointments. This is the kind of control an employee may be able to have over their day. Remote employees are now better equipped to balance their family and job obligations.

To some employees, the typical shared office space could be distracting.[164] Working from home may help these employees avoid distraction.[165] Thus, a work-from-home arrangement could help them increase their work productivity.[166] Another bonus for remote work is that employees do not have to consider how a daily commute would add on to their workday, as well as cutting down gas usage and other transportation costs.[167] Overall, a flexible work arrangement, including working from home, increases an employee's job satisfaction and their overall health and wellness.[168]

The work-from-home shift also proves to have positive effects on employers.[169] The talent pool is now larger than ever before since there is no specified job location.[170] When there was only one work location, it limited the job opening to just local candidates; now, candidates all over the world can apply for the position,[171] thus giving the company a diverse talent pool and a pick of possibly the world's best talent.[172] Reports also show an increase in employee productivity when allowing an employee to work remotely.[173] Another positive that an employer could expect is a reduction in employee absences.[174]

Even though working from home has changed what the typical work environment looks like, it does not mean that every aspect of work is going to change. Previously agreed-upon non-compete agreements signed by an employee

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162. *Id.*

163. *Id.*

164. Jennifer Herrity, *The Pros and Cons of Working From Home*, INDEED: CAREER GUIDE (July 26, 2025), https://www.indeed.com/career-advice/finding-a-job/the-pros-and-cons-of-working-from-home.

165. *Id.*

166. *Id.*

167. *Id.*

168. *Benefits of Remote Work*, NJIT: HUM. RES., https://hr.njit.edu/benefits-remote-work (last visited Oct. 4, 2025).

169. *See* Pfeifer, *supra* note 10, at 958.

170. *Id.*

171. *Id.*

172. *Id.*

173. *Benefits of Remote Work*, *supra* note 168.

174. Herrity, *supra* note 164.

at the time of hiring would still be valid and applicable.[175] Remote employees should be aware of the non-compete agreements they may have signed and the possible implications of their agreements. These agreements continue to affect employees based on trade secrets, customer relationships, specialized training, and geographic boundaries.[176]

Current job seekers may only be considering remote work opportunities because of the great control remote work allows them over their lives. The workforce is no longer bound by their physical location and may now have the freedom to move from place to place while keeping a steady job. When accepting a job offer, someone who is accepting a remote work position needs to understand that a non-compete agreement they could be signing would restrict where they can work geographically after the end of the employment relationship. There is an increase in the desire for remote work, so non-compete rules should be reevaluated to remain effective and not too prejudicial to an employee. Work from home can be viewed as the future of work in America, so laws affecting employment contracts should be made to fit this new type of work.

V. GEOGRAPHICAL RESTRAINT ISSUES IN NON-COMPETE AGREEMENTS IN REMOTE WORK

The shift to remote work has left open an opportunity to further complicate non-compete agreements that have a geographical restraint on a person's future employment opportunities. Think of an instance where an employee was recently hired by a company to work from home and was required to sign a non-compete agreement that restricts them from working for a competitor within fifty miles of their job location. There is now the question as to what is considered to be the job location. Is it their home office? Or is it the company's headquarters location? Going even further, how far can the geographical restriction expand? Could it cover both the employee's home location and the company headquarters? Is it possible that the restriction could cover an entire country? The shift to remote work should require some reconsideration of the usage of geographic non-compete agreements. This section outlines some of the limited case law that exists dealing with remote work and geographic limits on non-compete agreements. It ends with some proposals on rules that should be created to handle these limits.

A. The Limited Case Law for Non-Competes in Remote Work

In the case *Capsicum Group, LLC v. Rosenthal*, two employees signed a non-compete agreement with their employer, Capsicum Group, LLC, who was based out of Philadelphia, Pennsylvania.[177] The agreement prohibited them from being employed by any competitor within a 250-mile radius of any Capsicum office for

175. Lobel, *supra* note 140, at 5.

176. Jimerson Birr, *The Effect of Remote Work on Non-Compete Agreements*, JIMERSON BIRR: PRO. SERVS. INDUS. LEGAL BLOG (Jan. 30, 2023), https://www.jimersonfirm.com/blog/2023/01/effect-remote-work-non-compete-agreements/.

177. Capsicum Grp., LLC v. Rosenthal, 2013 WL 6667822, at *1 (E.D. Pa. Dec. 17, 2013).

two years after the termination of their employment relationship.[178] Both employees signed this agreement willingly at the beginning of the employment relationship.[179] After the termination of both employees' work with Capsicum, they began to work with a competitor, SRR.[180]

Pate, one of the former employees, worked with Capsicum from 2008 to September 2013 and worked as a Senior Forensic Consultant for the D.C., Maryland, and Virginia regions.[181] He resided in Hagerstown, Maryland.[182] His new job with SRR was technically operated from the Detroit, Michigan, office, even though he had no plans to relocate to the area.[183] Rosenthal began his employment relationship with Capsicum in 2009 and left the job at around the same time as Pate.[184] Rosenthal also became employed with SRR; his job stemmed from the Detroit, Michigan, office, but he most often worked remotely from SRR's office in New York.[185] Rosenthal lived in Brooklyn, New York, while he worked at Capsicum out of their New York office and had no plans to move from New York.[186]

Rosenthal and Pate shared their Capsicum non-compete agreements with SSR at the time of their application, and they were extended the offers because SSR believed them to be unenforceable.[187] In Pennsylvania, the jurisdiction to where Rosenthal's and Pate's non-compete agreements were subject,[188] non-compete agreements were permissible when "incident to an employment relationship between the parties; the restrictions imposed by the covenant are reasonably necessary for the protection of the employer; and the restrictions imposed are reasonably limited in duration and geographic extent."[189] Further, for a non-compete agreement to survive, it must be necessary in order to protect important business interests.[190]

To determine if the geographic scope and the time frame are legal, the employer's business interests must be examined.[191] The interest has to be "reasonably necessary" to protect the employer.[192] The non-compete paragraph aspect of their employment agreement did not allow employees to work for a competitor within 250 miles of a Capsicum office for two years after their employment had ended.[193] Pate and Rosenthal had a unique understanding of

178. *Id.* at *6.
179. *Id.* at *7.
180. *Id.* at *3-5.
181. *Id.* at *3.
182. *Id.*
183. *Id.* at *4.
184. *Id.*
185. *Id.*
186. *Id.*
187. *Id.* at *7.
188. *Id.*
189. *Id.* (quoting Victaulic Co. v. Tieman, 499 F.3d 227, 235 (3d Cir. 2007)).
190. *Id.* at *8.
191. *Id.*
192. *Id.*
193. *Id.* at *9.

Capsicum's technologies, strategies, and customer information, the court found.[194] Pate and Rosenthal's new employment with SSR had them doing work in a similar capacity to what they were doing at Capsicum.[195] This is the very type of new employment relation that the non-compete agreement was trying to protect. Pate and Rosenthal could use information previously learned and used at Capsicum to benefit their new employer, SSR.[196]

The court held that both the 250-mile restriction and the time limit of two years were reasonable.[197] This is based on the Capsicum customer lifetime.[198] The geographical restriction was also held to be reasonable based on the concentration of Capsicum's customer base around their offices.[199]

Capsicum Group, LLC v. Rosenthal highlights a unique problem involving the specialization of a company and its unique customer base.[200] A company should be able to place some restrictions on a former employee in order to protect the company from having a competitor get their hands on sensitive information. The non-compete agreement, in that case, is a reasonable application of a non-compete agreement, even on a remote worker, due to the sensitive information attempting to be protected. It is important to note that the court based its decision on the unique needs of the company.[201] There is no bright-line rule to determine what is "reasonable" in terms of mileage; rather, it is determined based on the individual company and the nature of the job.[202] This case also showed a situation where it was easy to tell exactly what the restriction was: 250 miles from any Capsicum office.[203]

Another example of geographic limits in non-compete cases is *McKissock, LLC v. Martin*, from the state of Texas. The court held that a non-compete agreement that banned an employee from working nationwide after the termination of her employment, but limited it to a few activities, was legal.[204] McKissock was headquartered in Missouri but operated nationwide.[205] When the employee began their job at McKissock, she signed an agreement that prevented her from working for any competitors for two years, nationwide, after the termination of her employment.[206] The goal of this agreement was to prevent the employee from disclosing any trade secrets or confidential information.[207] Throughout the employment relationship, most of the employee's work was done remotely.[208]

194. *Id.*
195. *Id.*
196. *Id.*
197. *Id.*
198. *Id.*
199. *Id.*
200. *See id.*
201. *Id.*
202. *Id.*
203. *Id.*
204. McKissock, LLC v. Martin, 267 F. Supp. 3d 841, 855-56 (W.D. Tex. 2016).
205. *Id.* at 846.
206. *Id.*
207. *Id.*
208. *Id.* at 848.

The employee ended her employment with McKissock five years after she was hired.[209] The employee then began to work for Cannon Institute (Cannon), a competitor to McKissock.[210] Before the employee's end of the employment relationship with McKissock, there is evidence that she had conversations with Cannon representatives about future opportunities.[211] An email was found in which the employee said that they, while employed with Cannon, would "grow Cannon to the point that is a SERIOUS threat to McKissock."[212]

The court applied a two-prong test to determine if the non-compete agreement was permissible, which comes from the Texas Business and Commerce Code § 15.05.[213] The first prong is that the agreement must be "ancillary to or part of an [otherwise enforceable] agreement which contains mutual, nonillusory promises."[214] Case law from Texas shows that when an employer makes an express promise to an employee to provide them with confidential information, the employee in return promises not to exchange the information with another employer.[215] The court held that the non-compete agreement between the employee and McKissock were "ancillary to [the confidentiality] agreement."[216] Therefore, the first prong had been satisfied, since McKissock trusted the employee with confidential information and the employee made a promise to keep that information safe.[217]

The second prong concerns the reasonableness of the restrictions made in the non-compete agreement.[218] The court must determine if the non-compete agreement concerns the geographic ban that prohibits the employee from working nationwide.[219] To determine if a geographical non-compete agreement is reasonable, the amount of time the restriction is in effect and the "scope of the activity to be prohibited" must be reasonable.[220] Here, the court found that McKissock had a business interest that needed to be protected, which is the confidential information that the employees got throughout their time at McKissock.[221] The court did find the geographic nationwide restriction to be too restrictive since it placed a larger ban than was necessary.[222] This is partly because the non-compete agreement did "not limit the scope of activity prohibited in any manner."[223]

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209. *Id.* at 847.
210. *Id.*
211. *Id.* at 847 (emphasis in original).
212. *Id.*
213. *Id.* at 852; TEX. BUS. & COM. CODE ANN. § 15.05 (West 2023).
214. Hunn v. Dan Wilson Homes, Inc., 789 F.3d 573, 584 (5th Cir. 2015) (citing Marsh USA Inc. v. Cook, 354 S.W.3d 764, 768 (Tex. 2011)); *McKissock*, 267 F. Supp. 3d at 852.
215. *McKissock*, 267 F. Supp. 3d at 853.
216. *Id.* at 854.
217. *Id.*
218. *Id.*
219. *Id.*
220. *Id.* (citing TEX. BUS. & COM. CODE ANN. § 15.05 (West 2023)).
221. *Id.*
222. *Id.* at 855.
223. *Id.* at 855-56.

The court then rewrote the non-compete agreement to narrow down the previous restriction to ensure that McKissock's confidential information stayed safe from competitors.[224] The reformed agreement stated that the employee would be restrained from doing services for a competitor that was of a similar vein to the job duties they completed at McKissock.[225] After this rewrite, the court deemed the nationwide ban for two years to be reasonable to protect the business interests of McKissock.[226]

State non-compete laws can put courts in a special position to rewrite previously unenforceable non-compete agreements to make them enforceable.[227] The Texas non-compete law used in *McKissock* is a good way for the courts to intervene in non-compete agreements. Non-compete agreements are especially important for some businesses that have a unique client base and do not want a former employee to take their clients with them.[228] This is the exact situation dealt with in the *McKissock* case.[229] The nationwide ban also makes the geographic scope easy for the former employee to understand since it is the boundaries of the United States.[230] The implications of a non-compete agreement should be easy for an employee to understand. In *McKissock*, the employees should have reasonably known that the information they were handling was sensitive and that the goal of the non-compete agreement was to protect McKissock's competitors from getting sensitive information.[231]

B. Possible Solutions for Geographic Remote Non-Compete Agreements

A geographic limitation for a non-compete agreement should be unenforceable when it is "arbitrary and not related to the protection of the employer's interests."[232] This would go against a reasonable non-compete agreement and would place undue hardship on a former employee.[233] Arbitrary here would mean that the employer made the geographic restriction randomly without reason.[234] The geographic scope should be directly related to an employer's area of business, and if the scope is not related, it should be found to be unreasonable.[235] Non-compete agreements should only be viewed as fair when they both protect the employer while also not placing too much hardship on an

224. *Id.* at 856.
225. *Id.* at 857.
226. *Id.*
227. *See id.* at 856.
228. *See id.* at 857.
229. *Id.*
230. *Id.*
231. *See id.* at 852-54.
232. LKQ Corp. v. Rutledge, 2023 WL 3981127, at *7 (N.D. Ill. June 13, 2023) (citing Medix Staffing Sols., Inc. v. Dumrauf, 2018 WL 1859039, at *3 (N.D. Ill. Apr. 17, 2018)).
233. *Id.*
234. *Id.*
235. *See* McNicholl Counseling, P.C. v. Jenkins, 2023 WL 2989873, at *1 (Ill. App. Apr. 18, 2023).

employee.[236] Non-compete agreements are unfair if they place excessive geographic limits on the employee.[237] In remote work situations, it may be difficult to understand what the employer's area of business is. It will be case-dependent to determine what the exact reasonable geographic restriction is needed.[238]

The necessity of non-compete agreements is both job and fact dependent.[239] Non-compete agreements can protect employers from having their confidential information spread to a potential competitor and protect trade secrets.[240] A solution to resolve the possible ambiguity for the geographic restriction that could be left by a remote work situation is the usage of the "blue pencil rule."[241] This use of the "blue pencil rule" would allow a court to step in and modify a non-compete agreement, especially in terms of its geographic limitations.[242] Think of a situation where a contract for remote work says, "employee cannot work for a competitor within forty miles for two years after the termination of employment." Here, it is ambiguous to understand where the forty miles is from. Is it from the headquarters of the employer? Or is it from the home of the employee? The blue pencil rule would allow the court to alter the wording of the agreement to clear up the ambiguity as to what the geographic area is.[243] The court could consider the business's interests and understand what the non-compete agreement's original goal was between the parties. From this understanding, the court would be able to determine if the geographic scope is from the employee's remote work location or the headquarters of the business. Therefore, the court would keep the employer's important business interests protected and be able to make it clear to the employee what their geographical restrictions are after the employment relationship had been terminated.

A negative to this approach is the amount of possible litigation it could bring to courts to clear up the ambiguity of a non-compete contract. To combat this issue, those who draft employment agreements should be aware of their specific state requirements and whether they permit the blue pencil rule. Drafters should also understand the level of specificity that should be required to make a contract understandable to a new hire. This includes detailing where the mileage limitation starts.

Critics of the blue pencil rule believe that this rule would allow the courts too much control over the language of the contract.[244] It would be unfair to employees, since courts could rewrite contracts. It could also go against the traditional values

236. *Id.* at *5-6

237. *See id.* at *9.

238. *See id.* at *5-6

239. *See Non-Compete Agreements: Friend or Foe?, supra* note 4, at 50-51.

240. *Id.*

241. *See id.* at 52-53.

242. *Id.* at 52.

243. Raimonde v. Van Vlerah, 325 N.E.2d 544, 546 (Ohio 1975); s*ee* Briggs v. Butler, 45 N.E.2d 757, 762-63 (Ohio 1942) (holding that the non-compete agreement was too restrictive using the blue pencil rule); Extine v. Williamson Midwest, Inc., 200 N.E.2d 297, 299-300 (Ohio 1964) (displaying a court applying the blue pencil rule).

244. Hassler v. Circle C Res., 505 P.3d 169, 176 (Wyo. 2022).

of contract law, which traditionally let the contract's terms be dictated by the two parties who are contracting.[245]

A proposition of the blue pencil rule to make it fairer to the contracting parties' original agreement is to only allow the court to intervene in very few circumstances and create guidelines to write these additions fairly for the parties.[246] That way, the court's duties in these cases are limited in scope and would not give the court too much discretion to add language that would become unfair to an employee. An idea for what the guidelines could be is to make the contract contain the exact location where the geographic restriction starts. There could even be a section that could require the parties to arbitrate about what the starting location should be.

Another approach that could be taken to combat the possible ambiguity in non-compete agreements is a rule requiring specificity on where the distance restriction begins to make the contract enforceable. Employment contract drafters would have to be aware of this rule and work it into employment contracts. This rule would prevent a flood of possible litigation from entering courts, since the non-compete agreement would have to be written in strict compliance with the rule.

A possible issue with non-compete agreements in a remote work setting overall could be the determination of what choice of law to use.[247] If an employee lives in one state and the employer operates out of another, and technically the employee signed the contract in their home, in their home state, it could be complicated to determine which state's law guides. A way to combat this possible issue is for the contract to include a choice of law provision.[248] A mandatory requirement of this provision would not only make it easier for a plaintiff to know which court to file in, but it would also make it clear which non-compete state rule would guide.[249]

There is little case law to be found on remote work in non-compete agreements, specifically regarding the geographic scope of these agreements. Therefore, there is room for new suggestions on how to deal with possible issues that may arise out of these agreements. It is important to be sensitive to the needs of the employee and to promote fair competition. That is why the blue pencil rule should be reconsidered with strict court guidelines to make these otherwise reasonable non-compete agreements compliant with the non-compete agreement rules in each state. The choice of law provision should also be a mandatory requirement of non-compete agreements to guide the creation of contracts and to make it easier to determine which set of state laws should be used. In the end, it is

245. *Id.*

246. Throughout this next section, I propose ideas that could help make non-compete agreements fair to the parties involved in the contract, as well as making them fit for use in the remote workplace.

247. *See* GPAC, LLP v. Andersen, 2022 WL 1469388, at *4-5 (D.S.D. May 10, 2022).

248. *See* United Healthcare Servs. v. Corzine, 2021 WL 961217 at *9 (S.D. Ohio March 15, 2021); Marsh USA Inc. v. Hamby, 958 N.Y.S.2d, 61, 61 (N.Y.S 2010) (unpublished table decision); Env't 360, Inc. v. Walker, 713 F. Supp. 3d 442, 448 (M.D. Tenn. 2024).

249. *See Marsh*, 958 N.Y.S.2d at 61.

important that employees are protected and do not have undue hardship blocking them from any reasonable form of employment.

VI. CONCLUSION

At this time in the United States, non-compete agreements are still able to be enforced depending on the state.[250] Even though non-compete agreements are a highly contentious area of law, it has been shown by courts that non-compete agreements in their current form remain legal in many states.[251]

Non-compete agreements remain important to keep an employer's best interests protected.[252] If a high-level employee left and went to a competitor five miles away, the employer could be at risk. This is why non-compete agreements should still be valid and used in some job types. These non-compete agreements must be clear, so an employee is easily able to understand what they are agreeing to.

The vast shutdowns to protect the public from the spread of COVID-19 have caused many people to remain in or seek remote work positions.[253] These remote work conditions also have benefits for the employer, such as lower costs and increased employee happiness.[254] Remote work allows an employee to take more control of their life and schedule.[255] Working from home allows them to oversee what work looks like for them.[256] This shift should cause a reassessment of current state laws on non-compete agreements, especially focusing on geographic limits. Remote work opens a new situation for an employee working from a different state than where their employer is located. This can cause confusion on the application of a non-compete agreement. Remote work opportunities now make it easier than ever for employees to work all over, so the non-compete agreements may become more difficult to apply.

Still, the American workforce needs to be protected from possibly greedy employers who want to restrict the free marketplace. An approach that should be used is the "blue pencil rule," so courts can rewrite an existing non-compete agreement for it to become reasonable and understandable.[257] If the blue pencil rule is to be used in non-compete agreements, there should be clear guidelines for courts to use in modifying the existing non-compete agreement to ensure that the original intention of the non-compete agreement remains unchanged, including the specification of the exact location where the geographic scope starts. The non-compete agreement should remain focused on protecting a business's legitimate interest as well as protecting the employee and not making it too difficult for them to find employment. Non-compete agreements, especially for remote work

250. ROTHENSTEIN ET AL., *supra* note 9, at 830.
251. *Id.*
252. *Non-Compete Contracts: Economic Effects and Policy Implications*, *supra* note 77, at 3.
253. Haan, *supra* note 138.
254. *How Allstate Employees Are Redefining Their Workplace*, *supra* note 150.
255. *See* Lobel, *supra* note 140, at 3.
256. *See id.*
257. *See Non-Compete Agreements: Friend or Foe?, supra* note 4, at 52.

arrangements, should contain a choice of law provision. This provision would make it easier for the contracting parties to understand what state rules would be applicable.

Non-compete agreements are still present in the majority of the United States and are often used; courts should reconsider their current rules for non-compete agreements, especially regarding geographic scope, and adjust them to fit the unique situation of remote work. These proposed new rules would make it easier for the contracting parties to understand what level of specificity to use and what geographic scope would be permissible to use.