

# Noncompetition Covenants: Frequently Asked Questions and Their Answers



## Q. What is a noncompetition covenant?

A. Under [RCW 49.62.010\(4\)](#), the term “noncompetition covenant” includes every written or oral agreement restraining an employee or independent contractor “from engaging in a lawful profession, trade, or business of any kind.” But it does not include:

- Non-solicitation agreements
- Confidentiality agreements
- Agreements prohibiting the use or disclosure of trade secrets or inventions
- Agreements entered into by persons purchasing or selling an ownership interest or the goodwill of a business
- Agreements entered into by a franchisee when the franchise sale complies with [RCW 19.100.020\(1\)](#)

Noncompetition covenants are sometimes called “non-competes.”

## Q. Are non-competes legal in Washington?

A. It depends. A 2020 law made non-competes unenforceable for employees and independent contractors who make below a certain earnings threshold, or for other reasons addressed later in this FAQ.

## Q. Is my non-compete unenforceable if I am below the earnings threshold?

A. Yes, if your earnings are calculated correctly. Under [RCW 49.62.010\(1\)](#), “earnings” means the annualized amount in “Box 1” of an employee’s W-2 form or the annualized amount on an independent contractor’s 1099-MISC form. The earnings thresholds are adjusted each year and are posted on the [Department of Labor and Industries’ website](#). The 2025 threshold for W-2 employees is \$123,394.17. The 2025 threshold for independent contractors is \$308,485.43.

## B. What if I only worked part of the year?

A. The earnings thresholds are “annualized,” or calculated as if you had worked an entire year. For example, in 2020, when the threshold for an employee was \$100,000, a worker would exceed the threshold if they worked for a company for three months and made \$10,000 each month because if they had worked all twelve months of the year, they would have exceeded the threshold.

## Q. Are there other reasons my non-compete might not be enforceable besides the earnings threshold?

A. Yes. [RCW 49.62.020](#) contains several reasons why a non-compete might not be enforced. A non-compete is unenforceable against an employee who is laid off, unless the employer provides compensation equivalent to the employee’s base salary for the enforcement period (less compensation earned through subsequent employment). And a court can apply a reasonableness test (which pre-dated the statute) to find it invalid.

## Q. The non-compete I signed says that I can only go to court in Delaware to dispute the agreement; can I still access Washington courts?

A. Yes. Under [RCW 49.62.050](#), when a Washington-based worker signs a contract provision that requires the worker to adjudicate the contract outside of Washington or deprives the worker of the benefit of Washington’s non-compete laws, that provision is unenforceable.

## B. My employment agreement says that I can’t “moonlight” or take a second job; is that true?

A. It depends. In general, under [RCW 49.62.070](#), an employer may not restrict an employee earning less than twice the state minimum wage from having an additional job. However, there are some exceptions when the specific services to be offered by the employee raise issues of safety for the employee, coworkers, or the public, or interfere with the reasonable and normal scheduling expectations of the employer. However, all workers still have a duty of loyalty to their employers and a duty to prevent conflicts of interest.

## Q. What do I do if my former employer is trying to enforce an unenforceable non-compete?

A. Under [RCW 49.62.080](#), you can bring a lawsuit, and there are provisions for attorney fees.

### An important final note:

**Even if a *portion* of your employment agreement may be unenforceable, that does not mean that the rest of it is. Typically, courts will enforce the remainder of the agreement even if a portion of it is unenforceable.**