

## Employer Cannot Limit Solicitation Of Unknown Future Customers, Court Says

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It is common for employers who have restrictive covenants with employees in those agreements to restrict the employees, after their departure, from soliciting company customers. A [recent case](#) gave one court's answer to the question as to how broad that restriction can be. Specifically, West Memphis Steel & Pipe, Inc. restricted two employees from soliciting the companies "past, present or prospective future customers or clients." Two employees brought a lawsuit asking the court to determine prospectively that the restriction was overbroad and therefore unenforceable by restricting them from soliciting "prospective future" customers. A federal court in Arkansas agreed, stating that it was reasonable for a company to protect relationships in which the departed employees were involved, but not unknown and unspecified future relationships.

Regular readers will recall that [state laws on non-competes and other restrictive covenants vary significantly](#). Perhaps the most significant variation is whether a state's courts will modify an overly broad restrictive covenant to "make it reasonable." Where I sit in Ohio, courts will do so. Had this case been in Ohio, a court likely would have just "revised" the language so that the company could have enforced the non-solicitation language to some extent. However, Arkansas is a state where that is not the case. In a very descriptive illustration of this principle, the court wrote:

How close a non-compete clause comes to being enforceable to being just broad enough does not matter – if it misses by an inch, it misses by a mile.

Accordingly, the company was left with no restriction at all and would be unable to enforce the covenant. This case is a good reminder that, regardless of what state you sit in (because even if you are based in a "court will modify" state, you might find yourself litigating over your agreement in another state that will not [follow your state's law](#), employers should work with counsel to carefully draft restrictive covenant language to maximize the likelihood of enforceability.

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