

## Can social workers ethically and legally keep clients when they leave their agencies?

**By Daniel Pollack & Kathryn Krase | April 26, 2023**

Social workers cannot assume they will stay in their jobs for a long time. Most social workers stay in a job for fewer than five years. When you leave your job, you might leave your clients too. You might consider: “Can I bring my clients with me?” An instinctive response might be, “Of course!” But the answer is more complicated.

Social workers serve a variety of clients, in many capacities, for many different types of employers. Relationships with clients can be one-time, short-term, or last months or even years. When client relationships are established should the social worker terminate that relationship? Isn’t that unethical to the client? Shouldn’t the client be able to leave with the social worker? But, if the client leaves to follow the social worker, isn’t that unethical to the agency? Or illegal? What if the social worker signed a contract with a “non-compete” or “non-solicitation” clause when they started the position?



As relationships develop between social workers and their clients, a reliance on the social worker may form. The relationship between client and social worker can be vital to the likelihood of progress. So, when the social worker leaves their employer, the client might want to go with the social worker. To avoid **these situations, employers might insert “non-compete clauses” or “non-solicitation” agreements into employment contracts.** Non-compete clauses prohibit employees from competing with their former employer when they leave their job. Some clauses include a limitation on where the employee can perform similar work, delineating a radius in miles, and a specific amount of time. Non-solicitation agreements prohibit employees from taking clients from the employer with them when they leave.

Non-compete and non-solicitation clauses are not always legal. Their validity varies by state. New York established a test for validity of these clauses on a case-by-case basis. A clause is considered valid in only if it meets these four standards:

- (1) Not greater than required to protect of employer’s legitimate interest,**
- (2) Does not impose undue hardship on employee, and
- (3) Is not injurious to the public, and
- (4) Is reasonable in time period and geographic scope.

In Massachusetts, there is a ban on non-compete clauses in social work employment contracts that use a geographic limitation (MA Gen L ch 112 § 135C); Non-solicitation is not explicitly addressed in the Massachusetts statute.

**California law states: “[E]very contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is... void.”** (CA BPC §16600). California courts have found both non-compete and non-solicitation clauses invalid, with the exception of certain situations that are not, generally, social work related.

Colorado law (Co. Rev. Stat. Sec. 8-2-113) generally prohibits non-compete agreements, including non-solicitation clauses relevant to social work practice.

In January, 2023, the Federal Trade Commission (FTC) proposed a ban on non-compete clauses, across industries, arguing that they are “exploitative”,

hinder innovation and harm consumers. The FTC's concern for consumers is similar to the relevant reasoning found in the *NASW Code of Ethics*. The *NASW Code* centers concern for the best interests of clients when a social worker is leaving their employer. Section 1.17 [Termination of Services], states in pertinent part that:

**“[s]ocial workers should take reasonable steps to avoid abandoning clients who are still in need of services...Social workers who anticipate the termination or interruption of services to clients should notify clients promptly and seek the transfer, referral, or continuation of services in relation to the clients’ needs and preferences... Social workers who are leaving an employment setting should inform clients of appropriate options for the continuation of services and of the benefits and risks of the options.”**

The *NASW Code*, therefore, allows social workers to transfer clients or **continue services after leaving, as long as the focus is on the client’s best interests, and their autonomy.** The *NASW Code* does not address, specifically, the validity of non-compete or non-solicitation clauses. However, a reading of the *Code* would suggest that when there is a **negative impact on a client’s best interests, these clauses would be unethical, even if not illegal.**

When leaving a job and wondering if you can bring your clients with you to your new position, consider:

Did you sign a contract that included a non-compete or non-solicitation clause?

- If you did, determine the law in your state. If the contract terms are valid in your state, then you will need to abide by the contract, or be prepared to defend a breach of contract. If the contract terms are not valid in your state, proceed as if the contract did not exist.
- If you did not, then whether you offer your client the option to continue with you to a new position should be grounded in supporting client self-determination to decide what is best.

As the validity of non-compete and non-solicitation clauses is currently being examined, social workers should focus on minimizing harm to our clients.



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