

# Employment Law Alert

## California Court Rejects “Narrow Restraint” Exception to State’s Prohibition on Non-Compete Agreements

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A California appellate court expressly rejected a “narrow restraint” exception to California’s non-compete statute, an exception relied on by federal courts to enforce non-competes against California employees where the restraint excludes an employee from a narrow portion of his or her profession. Concluding that federal courts misapplied state law in articulating and applying the narrow restraint exception, the court in *Edwards v. Arthur Andersen* held that non-competes are invalid “even if the restraints imposed are narrow and leave a substantial portion of the market open to the employee.”

California’s Business & Professions Code Section 16600 *et seq.* prohibits post-employment non-competes. The legislature and state courts have fashioned only three exceptions to this general rule related to the sale of a business, dissolution of a partnership and the need to protect trade secrets. The Ninth Circuit Court of Appeals and other federal courts fashioned a fourth exception—where the non-compete imposes only a “narrow restraint” on an employee (for example, an exclusion from “one small corner of the market”). The court specifically refused to follow *IBM v. Bajorek*, a frequently relied on Ninth Circuit decision upholding a narrowly drawn non-compete against a California employee (specifically, a clawback of stock option profits in the event the employee competed against IBM). Rejecting “narrow restraint” as a fourth exception to § 16600, the court relied on a long line of state court decisions holding that § 16000 and its predecessor statutes made no exception for contracts only in “partial restraint of trade.”

The at-issue non-compete also restricted the former employee from soliciting away Andersen’s personnel for 18 months. The court did not directly address the enforceability of this restriction, in part because *Edwards* did not challenge it, and implied that employers could continue to enforce such non-solicitation clauses if they are reasonable in scope.

This decision resolves (for now) the uncertainty about whether California courts would follow *IBM v. Bajorek* and similar federal decisions, and it confirms that “narrow restraint” is not a viable exception to California’s general prohibition on non-competes.

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