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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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