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Employer's "No Re-Hire" Provision may Violate California's Non-Compete Laws

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Pretty much everyone knows that California courts do not favor covenants not to compete. We even have our own state laws that address this very issue (Business & Professions Code section 16600). But what about provisions in employment agreements, separation agreements, or even settlement agreements in which an employee agrees to give up his right to future employment with the company? Is that lawful? The Ninth Circuit just considered this very issue.

In *Golden v. California Emergency Physicians Medical Group*, No. 12-16514 (9th Cir. April 8, 2015), the plaintiff, *Daniel Golden*, was an emergency room doctor who was formerly affiliated with the defendant, *California Emergency Physicians Medical Group* ("CEP"), a large consortium of over 1,000 physicians that manages or staffs many emergency rooms, inpatient clinics, and other facilities in California and other Western states. *Dr. Golden* sued *CEP* in 2008 stating various state and federal claims. The parties settled the case prior to trial.

Now, most important is this term in the settlement agreement that stated *Dr. Golden* waived his right to future employment with *CEP* and/or any facility with which *CEP* might contract. Not only did the agreement contain this future employment ban, but it also stated that if CEP took over a facility at which *Dr. Golden* was working, *CEP* could terminate *Dr. Golden* without liability. Not surprisingly, *Dr. Golden* refused to sign the settlement agreement, which resulted in litigation.

The U.S. District Court did not agree with *Dr.* Golden, and held that the settlement agreement was enforceable. The court found that the provision in the settlement agreement prohibiting *Dr. Golden*'s right to seek employment with *CEP* did not violate Cal. Bus. & Prof. Code § 16600, because it was not an unenforceable covenant not to compete.

The Ninth Circuit Court of Appeals did not agree. In reversing the District Court, the court of appeals found that the District Court abused its discretion in limiting its analysis under Section 16600 only to whether the agreement constituted a covenant not to compete.

Basically, the Ninth Circuit conceded that the settlement agreement in no way sought to prohibit *Dr. Golden* from surrendering any right to work for any of CEP's competitors or give up his profession generally. However, the court

found that Section 16600, which states that "every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void," does not limit itself to covenants not to compete or employment contracts. Rather, **Section 16600's prohibition is much broader, and covers all contracts that seek to restrain someone from engaging in a lawful profession**.

In coming to its conclusion, the Ninth Circuit recognized that the California Supreme Court had never squarely addressed this particular issue, but that, when presented with other cases interpreting the statute, the California Supreme Court consistently found that the statute broadly prohibited any contract that presented a substantial restraint on the ability to practice one's profession, even if it did not constitute a covenant not to compete. The Ninth Circuit also noted that California courts have rejected the traditional "rule of reasonableness," and have instead found that Section 16600 prohibits any restriction on the ability to practice a chosen profession. The Ninth Circuit refrained from holding that the settlement agreement did indeed violate Section 16600, but rather remanded the case to the District Court with instructions that in examining the validity of the settlement agreement, the District Court must examine not if the settlement agreement restricts *Dr. Golden*'s right to compete, but rather whether it presents "a restraint of a substantial character, no matter its form or scope."

The Ninth Circuit's holding represents a significant limitation on employers' ability to include no-rehire provisions as part of their employment, separation, or settlement agreements. As these provisions are commonly included in such agreements, and are often significant to employers as a means of buying peace in the future, the Ninth Circuit's opinion will likely cause employers to have to re-evaluate the value of a settlement agreement under which a troublesome employee may well be able to reappear on the employer's doorstep in the future.

With questions about this case or this question, contact your Hinshaw employment attorney.

Topics

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