

## LEGAL ALERT: CALIFORNIA SUPREME COURT REJECTS CONTRACTS RESTRICTING FORMER EMPLOYEES' ABILITY TO SOLICIT CUSTOMERS

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In *Edwards v. Arthur Andersen, LLP*, Case No. BC294853 (August 7, 2008) the California Supreme Court holds that non-solicitation of customer agreements are per se unenforceable unless they fall within the statutory or other exception permitted under the law. California law has long protected the rights of employees to lawfully pursue any trade or profession. For more than 100 years California law has invalidated any agreement between an employer and an employee which purports to limit or restrict an employee's ability to work in their trade or profession following the employment. Many other states permit such "non-compete" agreements between employers and employees as long as the restraints on competition are reasonable. In the *Arthur Andersen* case, the California high court rejected arguments that more narrow agreements – those that limit a former employee's ability to solicit the former employer's customers for some specified period of time – did not run afoul of Business and Professions Code §16600 and thus, were valid.

California's Business and Professions Code §16600 provides 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, except as provided in this Chapter [§§16600-16602.5]."

Arthur Andersen argued that such a restraint should not be invalid because it did not limit the former employee's ability to practice their profession but instead only limited their ability to practice that profession in regard to specific Arthur Andersen customers. The high court rejected that notion and rejected the "narrow restraint" rule adopted by some federal courts considering the enforceability of such non-solicitation agreements under California law, including the Ninth Circuit, the federal district that covers California.

Arthur Andersen argued that a non-solicitation agreement does not violate §16600 if it imposes a limited restriction and "leaves a substantial portion of the market available to the employee." The California Supreme Court resolved the dispute between federal and state courts and rejected this "narrow restraint" doctrine. In doing so, the California Supreme Court reaffirmed California's fundamental public policy that is expressed in Business and Professions Code §16600. The Court declared "Section 16600 is unambiguous, and if the legislature intended the statute to apply only to restraints that were unreasonable or overbroad, it could have included language to that effect." Because the decision was from the California Supreme

Court, federal courts considering the question under California law are now obligated to follow the California Supreme Court interpretation.

The California Supreme Court decided another issue in the *Arthur Andersen* case as well. It examined the scope of a release of claims that a former employee had been required to execute and it concluded that such releases, regardless of the broad scope of their language, do not include a release of rights and claims that are statutorily unwaivable. Specifically, the California Supreme Court concluded that a release of claims which purported to release “any and all” claims arising from or related to employment did not purport to release claims for indemnity under California Labor Code §2802. The same rationale would apply to any other claim which, as a matter of statute, cannot be waived by the employee.

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