



LABOR & EMPLOYMENT DEPARTMENT

# UPDATE!

## CALIFORNIA LABOR LAW: EMPLOYEES HAVE THE RIGHT TO COMPETE

As expected, the California Supreme Court has opined that non-competition agreements are invalid, even if narrowly drawn, unless they fall within an applicable statutory exception. The case arose out of Arthur Andersen's sale of its tax advisory services business to HBSC post-Enron. Andersen had required each employee to sign a non-competition agreement upon employment. In order to accept employment with HBSC, employees were asked to sign a "termination of non-compete agreement" and waive all claims against Andersen. In exchange, Andersen would waive its right to the non-compete protections.

The Court held that non-competition provisions are interpreted broadly, and unenforceable provisions include those prohibiting the solicitation of clients and those that impose a penalty on competition instead of prohibiting the competition outright. These agreements are prohibited by California Business and Professions Code Section 16600. The Court found that the Andersen non-compete agreement was invalid.

Enforceable non-competition agreements meeting the statutory exceptions include those obtained in connection with: (1) the sale of the goodwill of a business; (2) the sale or disposal of all of one's ownership interest in a business entity; (3) the sale of all or substantially all of the operating assets together with the goodwill of a corporation, its subsidiary, or a division; (4) the dissolution of an LLC or termination

of a member of the LLC; and (5) the dissolution of a partnership or withdrawal of a partner. Non-competition agreements also may be appropriate when they are designed to protect an employer's trade secrets.

The California Supreme Court also reviewed the release agreement offered to Edwards by his new employer, whereby he would have to release "any and all claims" against Andersen. The Court considered whether the release of "any and all claims" encompassed those claims that are deemed unwaivable by California law, such as indemnification, therefore making the release unenforceable. The Court held that a contract provision whereby an employee releases "any and all" claims does not encompass nonwaivable statutory protections, and that such general releases are enforceable and valid. Unless an agreement otherwise expressly includes a waiver of statutorily nonwaivable rights, a contract provision releasing an employer of "any and all claims" by its employee is valid.

The case is *Edwards v. Arthur Andersen LLP*, Case No. 147190, and the decision is available at the California Supreme Court's Web site at the following link:  
<http://www.courtinfo.ca.gov/opinions/documents/S147190.PDF>

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