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ACC Association of Corporate Counsel CHICAGO

What's New in the Area of Trade Secrets and Non-Competes, Particularly in the Financial Services and Health Care Industries

May 7 and 8, 2019

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Agenda

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Non-Compete Agreements in 2019: Under Siege on Myriad Legal Fronts

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Massachusetts Noncompetition Agreement Act (2018)

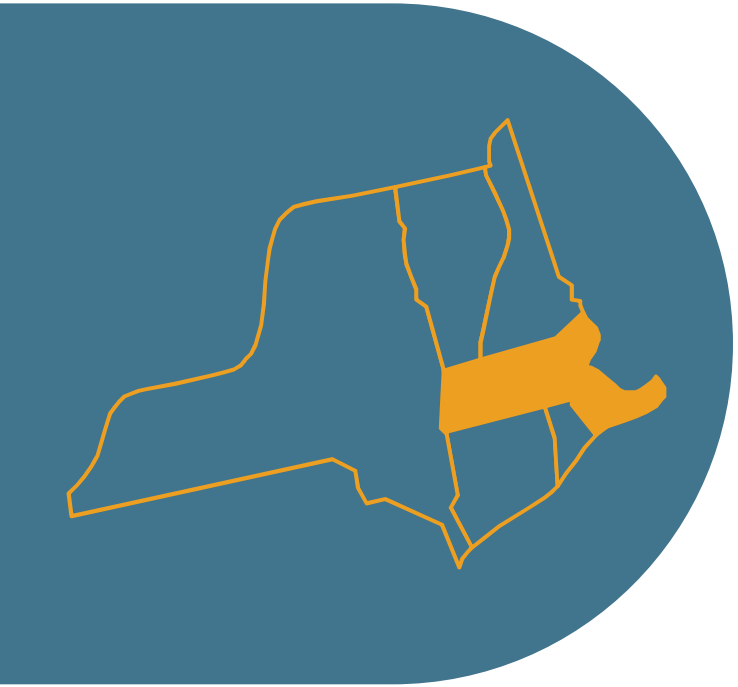
The Basics	• Applies to employee non-competes entered into after 10/1/2018 • Includes independent contractors • Maximum duration: 12 months after separation unless employee breached fiduciary duty
Non-competes Unenforceable Against:	• Non-exempt employees under FLSA • Employees laid off or terminated w/o cause • Students in short-term employment • Employees 18 or younger
Act Does Not Apply to:	• Customer and employee non-solicits • Non-competes made in connection with sale of business or ownership interest, or in separation agreement

Massachusetts Noncompetition Agreement Act (2018)

Consideration	• Mandatory "garden leave" pay during non-compete period of at least 50% of employee's highest annualized base salary within the 2 years preceding employee's termination, or "other mutually-agreed upon consideration between the employer and employee, provided that such consideration is specified"
Strict Notice Requirements	• For new hire: With offer letter or 10 business days before start date • Signed by both parties • Informed of right to consult with counsel • For current employees: 10 business days' notice for new noncompete • If part of separation or severance agreement – 7 business days to revoke
Other Restrictions	• Choice of Law - not enforceable if employee has been a resident of, or employed in, MA for at least 30 days immediately prior to termination • Venue – where employee resides or, if mutually agreed, Suffolk County Court

Massachusetts Noncompetition Agreement Act

Unanswered Questions



1. *What qualifies as "other mutually-agreed upon consideration" as an alternative to the 50% of salary garden leave amount?*

2. *If an employer chooses to waive all or part of the non-compete period, must it provide the required consideration for the restricted period for the full period of time originally specified, or can it be cut off when the restricted period is waived?*

3. *Under what circumstances is a termination "without cause" within the meaning of the Act?*

Washington Legislature Passes Bill Limiting Enforceability of Noncompetition Agreements

"Act Relating to Restraints, Including Noncompetition Covenants, on Persons Engaging in Lawful Professions, Trades or Businesses"

- April 17, 2019: Washington House and Senate both passed bill
- Governor Jay Inslee is expected to sign the bill into law quickly
- January 1, 2020: Effective date, if signed into law
- Will apply to any claims asserted on or after January 1, 2020 regarding non-competition agreements, even if the agreement was signed prior to that date
- Will render unenforceable non-competition provisions signed by employees earning less than $100,000 and independent contractors earning less than $250,000 annually
- Any non-competes exceeding 18 months will be considered unreasonable and unenforceable

Other 2018 Non-Compete Legislation

Idaho

- Reversed 2016 law creating rebuttable presumption of irreparable harm upon a finding that the employee violated non-compete
  - Now that burden is back on employers to show adverse effect on legitimate business interests

Utah

- Barred enforcement of non-competes for employees in the broadcasting industry, unless certain salary and other conditions met, including that the non-compete is in a written employment contract with a term of no more than four years
  - **BUT: 2019: H 199 –** removed the four-year cap; a broadcasting industry non-compete may be included as "part of a written contract of reasonable duration, based on industry standards, the position, the broadcasting employee's experience, geography, and the parties' unique circumstances"

Colorado

- Amended law governing physician non-competes to exclude physicians treating patients with "rare disorders" from having to pay damages for joining a competitor

Non-Competes: State of the States

- **Non-competes are enforceable in most states, if "reasonable"**
- However, in 2019 – Restrictions proposed in roughly 20 states
- Ahead of its time? Illinois Freedom to Work Act of 2016
  - Prohibits non-competes for anyone earning less than the greater of:
    - the hourly rate equal to the minimum wage required by the applicable federal, state, or local minimum wage law; or
    - $13.00 per hour

And There's More: State AGs Focus on Low-Wage Workers

- **AGs in numerous states challenging non-competes aimed at low-wage workers:**
  - CA, DC, IL, MD, MA, MN, NJ, NY OR, PA, RI, WA
  - Big targets – national fast food and retail companies, but other industries and companies have been affected too
  - Under settlements, companies either eliminate or reduce the use of non-competes
- **January 2019:** Illinois AG reached settlement with national payday lender to end non-competes on low-wage workers
- **September 2018:** AGs for IL & NY settled with WeWork (shared office space company) – non-competes for some 3,300 employees, including janitors and baristas – eliminated or narrowed for all but about 100 executives

Federal Non-Compete Reform?

- **Jan 2019: s124 – "Freedom to Compete Act"**
  - Introduced by Sen. Marco Rubio (R-FL)
  - Would prohibit non-competes for certain non-exempt employees
  - WOULD APPLY RETROACTIVELY AS WELL
- **March 2019: Bipartisan group of six Senators ask for GAO review of non-competes**
- ***What is known about the prevalence of non-compete agreements in particular fields, including low-wage occupations?***
- ***What is known about the effects of non-compete agreements on the workforce and the economy, including employment, wages and benefits, innovation, and entrepreneurship?***
- ***What steps have selected states taken to limit the use of these agreements, and what is known about the effect these actions have had on employees and employers?***
- **March 2019: Labor Unions, advocacy groups and academics to FTC: Issue rules banning non-competes**
  - 55-page petition: Non-competes are "contracts of adhesion"
- **September 2018: Four Congress members release a report recommending that non-compete agreements be banned**

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Agreements Not to Solicit: The Next "Siege" Frontier?

Three California Rulings Invalidate Agreements to Not Solicit Employees

- **Background:** ***Edwards v. Arthur Andersen LLP,*** 44 Cal. 4th 937 (2008):
  - California Supreme Court broadly banned non-competes, but left undecided whether or to what extent co-worker non-solicits are enforceable under Cal. Bus. & Prof. Code §16600 (with limited exceptions, any contract that restrains someone from engaging in a lawful trade, business, or profession is unenforceable)

THEN, A DECADE LATER AND WITHIN THE SPAN OF 5 MONTHS

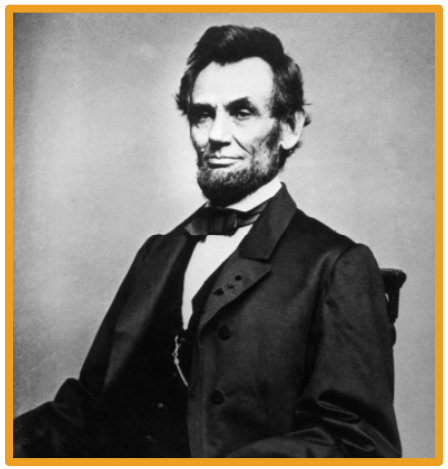
- ***AMN Healthcare, Inc. v. Aya Healthcare Servs., Inc.,*** 28 Cal. App. 5th 923 (Cal. App. Nov. 1, 2018): Under Edwards, a broadly worded contractual clause that prohibited solicitation of employees for one year after employment violates § 16600
- ***Barker v. Insight Global LLC,*** Case No. 16-cv-07186 (N.D. Cal., Jan. 11, 2019): Adopted court's reasoning in ***AMN***
- ***WeRide Corp. v. Huang,*** 2019 WL 143934 (N.D. Cal. April 1, 2019): Adopted courts' reasoning in ***AMN*** and ***Barker***

Agreements to Not Solicit Customers/Clients

- **Lawful as to current clients/customers but not prospective clients**
  - ***Mercer Health & Benefits LLC v. Digregorio***, 307 F. Supp. 3d 326 (S.D.N.Y. 2018): customer non-solicit was enforceable as applied to employer's current clients, but no legitimate business interest in expanding scope of customer non-solicit to *prospective* clients.
- **Can non-solicit prohibit "accepting," as well as "soliciting,"clients**
  - *HRB Prof'l Res. Ltd. Liab. Co. v. Bello, No. 17-CV-7443 (KMK),* 2018 U.S. Dist. LEXIS 166434 (S.D.N.Y. Sept. 27, 2018): Court rejected former employee's "first-contact" argument (i.e., that he did not solicit clients, but rather clients came to him), as irrelevant because customer non-solicit prohibited him from accepting, not just soliciting clients.
  - ***Corporate Synergies Group, LLC v. Andrews, et al.,*** No. 18-cv-13381 (D.N.J. Oct. 3, 2018): Court enforced customer non-solicit barring former employees from, among other things, "directly or indirectly accepting, soliciting, calling upon or servicing clients" with whom they worked in the year prior to their resignations.

Non-Competes in the Land of Lincoln:
An Update on What's "Reasonable"

"In law it is a good policy to never plead what you need not, lest you oblige yourself to prove what you can not."



‘Janitor Problem’ Sinks Illinois Non-Compete

Corporate Synergies Group, LLC v. Andrews, et al., No. 18-cv-13381 (D.N.J. Oct. 3, 2018):

- **Facts:**
  - Non-compete prohibited defendant’s employment in any capacity at another company in the same business
  - Defendant argued it “would bar him from even working as a janitor at another company”
- **Held:**
  - Court agreed and invalidated the restrictive covenant
  - Notably, Court declined to modify the overly broad restrictive covenant, determining that there was “no factual scenario under which it would be reasonable”
- **Take away:**
  - **Draft non-competes (and other restrictive covenants) as narrowly as possible to meet legitimate business needs – and not be so broad as to bar an employee from even working as a janitor for a competitor**

State and Federal Courts in Illinois Remain Split Over Required Consideration

- ***Fifield v. Premier Dealer Servs., Inc.,*** 2013 IL App (1st) 120327, 993 N.E.2nd 938 (Ill. App. Ct.), *appeal denied,* 2013 Ill. LEXIS 883 (Ill., Sep. 25, 2013):
  - **Illinois Appellate Court held that, absent other consideration, there must be two or more years of employment after signing a restrictive covenant for there to be adequate consideration.**
  - **Since that decision, Illinois state and federal courts split on whether to follow *Fifield,* and they remain split:**

Indus. Packaging Supplies, Inc. v. Channell, **2018 WL 2560993, 2018 U.S. Dist. LEXIS 93598 *(N.D. Ill. Jun. 4, 2018).***

"My prediction is that the Illinois Supreme Court would reject the bright-line two-year rule in favor of a fact-specific approach."

Automated Indus. Mach., Inc. v. Christofilis, **2017 IL App (2d) 160301-U (Ill. App. Ct. 2017), *appeal denied,* 2018 Ill. LEXIS 246 (Ill., Mar. 21, 2018).**

"We acknowledge that there is a possibility that our Supreme Court will reject a two-year bright-line rule in favor of a more fact specific rule."

- **Until the Illinois Supreme Court weighs in, prudent employers will provide consideration in addition to mere continued employment.**

Illinois Appellate Court Declines to Adopt Bright Line Rule on What is an Unreasonable Duration for Restrictive Covenants

Pam's Acad. of Dance/Forte Arts Ctr. v. Marik, 2018 IL App (3d) 170803

- Dance company sued former employee for breaching restrictive covenants by allegedly opening a dance studio within 25 miles of plaintiff and soliciting students and teachers by means of an "improperly obtained" customer list
- **Issue:** Is a post-employment non-compete lasting five years or a post-employment customer/co-worker non-solicit lasting three years per se unenforceable under Illinois law?
- **Illinois Appellate Court:**
  - Declined to find that three or five year restrictive covenants were de facto unenforceable – case-by-case determination
  - Directed trial court to consider the totality of the circumstances: "the reasonableness of the restrictive covenant at issue here requires the resolution of a number of facts"
- **Best approach:** Adhere to the standards set forth in the Illinois Supreme Court's seminal decision, ***Reliable Fire Equipment Co. v. Arrendo***:
  - **A restrictive covenant is only enforceable if it: (1) is no greater than required for the protection of a legitimate business interest of the employer-promisee; (2) does not impose undue hardship on the employee-promisor; and (3) is not injurious**

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Confidentiality and Nondisclosure Agreements: #MeToo Prompts New Laws

Confidentiality/Non-Disclosure Agreements

- **May have greater protection than provided by Trade Secrets Act**
  - Confidential information need not rise to level of a trade secret to be protected
  - Applies both during and post-employment
- What is protectable?
- Is the agreement reasonable?
- Is it compliant with the law?
  - Confidential information relating to business:
    - Financial information
    - Methods of operation
    - Customer names and information
    - Personnel data (with limitations)
- Is the agreement reasonable?
- Is it compliant with the law?

Confidentiality/Non-Disclosure Agreement ("NDA") New Legal Limitations

Recent state laws ban/restrict NDAs and "waiver of rights" agreements

- **NDAs:**
  - Many bans are limited to claims of sexual harassment and/or assault, e.g., TN, VT, WA
  - Some are broader, e.g., NJ (all discrimination, harassment, retaliation)
  - At least one ban is much broader, e.g.:
    - **CA: Gov't Code § 12964.5 Effective January 1, 2019 – it is unlawful to require an employee "to sign a nondisparagement agreement or other document that purports to deny the employee the right to disclose information about unlawful acts in the workplace, including but not limited to, sexual harassment"**
- **Waiver of Rights Agreements:**
  - MD, NJ, VT, WA: Prohibit employers from requiring employees to waive certain substantive and procedural rights and remedies as a condition of employment

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Trade Secrets Law: What's New?

Trade Secret Laws

An Update

- Since the Defend Trade Secrets Act (DTSA) was passed in 2016, the number of civil trade secrets cases filed in federal and state courts has increased by 30%
- DTSA granted original federal court jurisdiction for all trade secret misappropriation cases
- Massachusetts joined 48 states by adopting the Uniform Trade Secrets Act (UTSA), effective October 1, 2018
- Now, New York is the only state not to have adopted the UTSA

Massachusetts UTSA

Key Points

- **Protects trade secrets that offer actual or potential economic advantage to their owners**
  - Prior law protected trade secrets that were in "continuous use" within a business, and "potential economic value" of a trade secret was unlikely to warrant protection
- **Allows courts to enjoin "[a]ctual or threatened misappropriation" of trade secrets**
- **Eases the burden on defendants in recovering fees for defending bad-faith trade secrets claims**
- **Key Differences between Massachusetts UTSA and DTSA:**
  - **Ex parte seizures only available under DTSA**
  - **MA does not require disclosures about whistleblower immunity before attorney's fees may be awarded**

“Secret” = “Trade Secret” Only if Adequate Measures Are Taken to Protect It

- **To qualify as a “trade secret”:**
  - The information “must have been sufficiently secret to impart economic value because of its relative secrecy,” and
  - The owner “must have made reasonable efforts to maintain the secrecy of the information
- **Abrasic 90 Inc., d/b/a CGW Camel Grinding Wheels, USA v. Weldcote Metals, Inc., Joseph O’Mera and Colleen Cervencik,** No. 18 C 05376 (N.D. Ill. Mar. 4, 2019)
  - Court denied employer’s preliminary injunction application under DTSA and Illinois TSA largely because the employer had taken **“almost no measures to safeguard the information that it now maintains was invaluable to its competitors.”** The Court stated that the security **“was so lacking that it is difficult to identify the most significant shortcoming”**

What are "Adequate" Measures to Protect Trade Secrets?

CGW case (cont'd)

- **According to the Court, the following were among the data security measures that the employer could have taken:**
  - **Agreements:** Non-disclosure and confidentiality agreements with employees
  - **Policy:** Policy on the confidentiality of business information "beyond a vague, generalized admonition about not discussing CGW business outside of work"
  - **Training:** Employee training to keep certain information confidential
  - **Exit Interviews:** Asking departing employees whether they possessed any confidential company information, and instructing them to return or delete any
  - **IT Training:** Adequately training the IT manager about data security practice
  - **Restricted Access:** Restricting access to sensitive information on a need-to-know basis
  - **Labeling:** As appropriate, labelling documents "proprietary" or "confidential"

“Adequate Measures:” Real Life Application

Chicago Tribune, April 2019: Garrett Popcorn Shops Sues Former Employee for Theft of Trade Secrets

- **Reportedly, the company guards its recipes so closely that “only three employees have access to the information, by verifying their identity via thumbprint.”**
- **Garrett alleges that:**
  - After employee, Aisha Putnam (Director of R&D), was terminated, it discovered that, prior to her discharge, she downloaded more than 5,400 files and saved them to a USB drive.
  - The files contain information on pricing, product processes, distribution agreements, supplier information, market research and more.
  - Putnam signed **confidentiality agreements** “throughout her tenure,” and after she departed, Putnam “signed a document saying she deleted all the information in her possession protected by one of the confidentiality agreements, **but she refused a forensic review of her electronic devices.”**
- **Putnam’s attorney:** “We have given a sworn statement saying that she’s done nothing, she’s got nothing and that should be enough.”

DTSA: Immunity for Whistleblowers (18 U.S.C. § 1833(b))

- Christian v. Lannett Co., Inc., No. CV 16-963, (E.D. Pa. Mar. 29, 2018)
- Granting whistleblower protection under the immunity provision of DTSA
- HELD:
  - The court granted immunity to the terminated manager under DTSA.
  - The disclosure (made pursuant to a court order) was found to be consistent with DTSA's immunity provision, which allows a whistleblower to disclose trade secrets "in confidence… to an attorney … solely for the purpose of reporting or investigating a suspected violation of law"

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Non-Compete Agreements in the Financial Services Sector: Recent Developments

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Litigation Ramps Up After Two Founders Exit

The Broker Protocol

- **Started by 4 firms in 2004 – By 2018, 1,300 firms signed on**
  - **To help registered representatives transition**
- **In essence, permits reciprocal poaching of brokers**
  - **If a broker leaves one Protocol firm for another Protocol firm, and follows the protocol, the broker can:**
    - **Take client contact and account title information to his/her new firm; and**
    - **Solicit the clients he/she serviced at his/her former firm**
- **By late 2017: Two founding members (UBS & Morgan Stanley) withdrew: Declared intent to fully enforce such agreements**
  - **Indeed, they began making good on this promise**
    - Reportedly, Morgan Stanley has "substantially" increased court filings against transitioning financial advisors; "with UBS filing an equal, but large, number of lawsuits year over year"

Example:

Morgan Stanley Smith Barney LLC v. Ronald Ouwenga et al.,

Case number 1:18-cv-06373 (N.D. IL 2018)

- **Firm alleged:**
  - Breach of contract, breach of the duty of loyalty and unfair competition
- **Specific claims:**
  - Six financial advisers who had managed $660m took confidential info and clients when they left for competitor Stifel Nicolaus & Co.
  - Clients said they were solicited to move business to competitor
  - Some clients asked bank if office was closing, raising concerns that former employees were making "false and disparaging remarks"
  - Former employees were trying to solicit clients on social media as well
- **Brokers alleged:**
  - All submitted affidavits swearing that they were advised by new employer not to solicit former clients or take customer info, so TRO unnecessary
  - They only took publicly available information
  - Morgan Stanley agreements are unenforceable and only 2 of the 6 signed them
- **Dec. 2018:** TRO granted

Trend: Investment Firms Pursuing Aggressive Enforcement

- **Nov. 2018 -- Edward D. Jones sued two advisors who moved to Ameriprise for allegedly violating non-solicitation agreement**
  - (Firm is not a member of the Protocol)
- **Allegations:**
  - Over $150m in assets at stake; over $19m already transferred to Ameriprise
  - Advisors printed out lists containing more than 1,000 client names, phone numbers and other confidential information
- **Brokers' response:**
  - Firm "encourages the advisors it hires to take customer lists and solicit clients upon transfer. This is the conduct in which plaintiff now falsely accuses defendants of engaging, and that plaintiff seeks to enjoin."
- **Other 2018 lawsuit examples:**
  - Jones convinced a Texas court to issue a TRO against a broker who joined an independent broker-dealer while it filed for $1m in damages in arbitration
  - Fidelity Investments won injunctions against a broker in Connecticut who joined an RIA and against an Arizona team who affiliated with LPL Financial
  - Charles Schwab Corp. pursued brokers who left its branches and call centers for other firms

Garden Leave: How One Court Balanced the Scales of Justice

- ***Haque v. Soundpoint Capital Management LP,*** Index No. 653016/2018 (N.Y. Sup. Ct. NY County)
- Employee was subject to a Noncompete:
  - "Prior to your termination of your Sound Point Services, and for a period of three (3) months thereafter, you will not, directly or indirectly… or otherwise engage in, assist or have an interest in, or enter the employment of or act as an agent, advisor or consultant for, any person or entity which is engaged in, or will be engaged in, the investment management business."
- Employee quit to work for a competitor; then filed suit for a declaratory judgment holding the non-compete unenforceable.
- **Held: The non-compete is reasonable and, considering the misappropriation allegation, "the balance of the equities" favored the employer.**
  - Court issued a preliminary injunction ON THE CONDITION that the company pay the salary "in lieu of an undertaking" (i.e., posting a bond) for the three-month duration of the non-compete.

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Non-Compete Agreements in the Health Care Sector: An Update

State Laws Prohibiting Physician Non-Competes

Massachusetts:

Bans restrictions on locale for any period of time

Delaware:

Similar to MA but allows for physician to pay damages for breach of non-compete

Colorado:

Similar to DE but no damages allowed re: individuals with "rare diseases"

Rhode Island:

Similar to MA

State Laws Limiting Physician Non-Competes

New Mexico

N.M. Stat. § 24-1I-1 *et seq.* prohibits provisions in agreements which restrict the right of health care practitioners to *provide clinical health care services*. The law, however, does allow non-disclosure provisions relating to confidential information; non-solicitation provisions of no more than one (1) year; and imposes reasonable liquidated damages provisions if the practitioner does provide clinical health care services of a competitive nature after termination of the agreement.

Connecticut

Conn. Gen. Stat. § 20-14p(b)(2), regarding physician non-competes, limits the allowable duration (to one year) and geographical scope (up to 15 miles from the "primary site where such physician practices") of any new, amended or renewed physician agreement.

Public Policy Considerations

Restrictive Covenants – Health Care Industry

Physicians and Future Employment

Golden v. Cal. Emergency Physicians Med. Grp., 896 F.3d 1018 (9th Cir., Jul. 24, 2018)

Facts:

- After settling discrimination suit, doctor refused to sign a written settlement agreement that included a provision prohibiting him from working:
  - For the former employer; or
  - At any facility it may own or with which it may contract in the future.

Issue:

- Did the "no future employment" clause violate § 16600 of the Cal. Business & Professions Code, which invalidates "every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind …"?

Ninth Circuit:

- Yes, in part.
  - The prohibition on future employment at facilities owned or managed by the former employer did not impose a substantial restraint and was therefore acceptable.
  - However, a prohibition on employment with third parties who contracted with the former employer was overbroad because it was a substantial restraint on the lawful practice of medicine.

Non-Competes and Termination Without Cause

- **Many courts consider the reason for termination in weighing enforceability of non-compete, e.g.:**
  - **AR, IL, IA, KY, ME, MS, NY, PA, SD, TN, DC**
  - Reasoning: Unfair to enforce where employment termination is w/o cause or for good reason (e.g., business downturn)
- ***Davis v. Zeh,* 2018 NY Slip Op 51870(U) (NY Sup. Ct. Del. County 2018):**
  - TRO denied against veterinarian who had agreed not to work within 40 miles of employer for 5 years in any area of veterinary medicine
  - **In part, because of employer's unpersuasive evidence that employee fired for cause**
    - "***Where, 'the employer terminates the employment relationship without cause . . . his action necessarily destroys the mutuality of obligation on which the covenant rests'"***
- **TIP: DOCUMENT PERFORMANCE AND CONDUCT ISSUES**

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Scrutiny of No-Poach Agreements Ramps Up in 2019

No Poach Agreements

Federal Scrutiny

- "Antitrust Guidance for Human Resources Professionals" published by U.S. Department of Justice, Antitrust Division, jointly with Federal Trade Commission, in October 2016
- Guidance is being followed by current Administration

Prohibited Conduct

- **Wage-Fixing Agreements** – inter-company agreements regarding employee salary or other terms of compensation, either at a specific level or within a range.
- **No-Poaching Agreements** – inter-company agreements to refuse to solicit or hire the other company's employees.

No Poach Agreements

Red Flags

- **Guidance includes red flags likely to cause antitrust concerns**
- **Companies, managers, and human resource professionals should not:**
  - Agree with another company about employee salaries or other forms of compensation, either at a specific level or in a range
  - Agree with another company to refuse to solicit or hire that company's employees
  - Agree with another company about employee benefits or other terms and conditions of employment
  - Express to another company that the companies should not try too aggressively to hire each other's employees
  - Exchange company-specific information about employee compensation or other terms and conditions of employment
  - Discuss any of the above topics with colleagues at other companies – even in social settings, and including being present at meetings where such topics are discussed
  - Receive documents or information from another company containing internal, company-specific, compensation or other information concerning terms and conditions of employment

No Poach Agreements

Red Flags

The red flags identified by the DOJ and FTC are not exhaustive.

On the other hand, engaging in conduct that would be considered a red flag does not mean an antitrust violation has occurred.

- *For example, it may be permissible to have an agreement not to solicit another company's employees if it arises in the context of a larger, pro-competitive arrangement.*

No Poach Agreements

Possible Consequences of Violations

- Criminal prosecution
- Civil enforcement actions by DOJ and/or FTC
- Actions by state Attorneys General
- Civil lawsuits by harmed employees/private parties (which could include treble damages and attorneys' fees)

No Poach Agreements

State Scrutiny… and DOJ's Shifting (?) Position

- Franchise Systems
- 2018: Washington Attorney General Bob Ferguson began actions against franchise systems that include no-poach agreements in their franchise contracts
  - Over 50 chains have entered into agreements with Ferguson's office
- Numerous other state AGs have followed Ferguson's lead
- March 2019: Major chains, including Arby's, Dunkin Brands, Five Guys and Little Caesars, have entered into an agreement with AGs in 13 states and DC
- A number of lawsuits are pending against companies that refused to settle
- Jan./Feb 2019: US Justice Department filed notices of intent to file statements of interest in some of the pending cases on behalf of the companies
- Non-Franchise Targets
- February 2019: DOJ filed notice in Seaman v. Duke University
  - Involves an alleged agreement between Duke University and University of North Carolina at Chapel Hill not to poach each other's medical school professors

Be In The Know …

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Questions?

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What's New in the Area of Trade Secrets and Non-Competes, Particularly in the Financial Services and Health Care Industries

May 7 and 8, 2019