Labor and Employment Alert: The 9th Circuit Makes it Even Harder to Restrict Former Employees' Employment

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CLIENT ALERT | 4.9.2015

California has the strictest law against restrictive employment covenants in the country. The noncompete statute (Section 16600 of California's Business & Professions Code) 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." For almost a century, the California courts have broadly interpreted this statute in favor of open competition and employee mobility, even at the expense of what – in other states – could be considered the employer's legitimate business interests. This makes it notoriously difficult to enforce noncompete agreements against former employees in California. And the Ninth Circuit Court of Appeals has just made it even harder.

In *Golden v. California Emergency Physicians Medical Group* (CEP), Dr. Golden had sued CEP, his former employer, for discrimination. In return for "a substantial monetary amount," he agreed to dismiss his lawsuit and waive any rights to employment with CEP or at any facility CEP may own or contract with in the future. But then, Dr. Golden refused to sign the settlement agreement. His attorney, in an effort to collect his contingency fee, moved to enforce the agreement. The district court ultimately ordered the settlement agreement enforced. Dr. Golden appealed to the Ninth Circuit, arguing that waiving his right to future employment violated California's noncompete statute.

The Ninth Circuit, in a 2-1 decision, agreed and held that California's prohibition on restraining employees' employment was not limited to agreements with traditional noncompete provisions. Instead, the broadly worded noncompete statute encompasses "***every*** contract" that restrains a person's profession, trade, or business: "We have no reason to believe that the state has drawn Section 16600 simply to prohibit 'covenants not to compete' and not also other contractual restraints on professional practice." Section 16600's stark prohibition on restraints of trade "extends to any restraint of a substantial character, no matter its form or scope" and "extends to a larger category of contracts than simply those where the parties agree to refrain from carrying on a similar business within a specified geographic area" (in other words, a traditional noncompete agreement).

As a result, the Court concluded that a no-employment provision could violate Section 16600. The Court remanded the case to the district court to determine whether Dr. Golden's no-employment provision constitutes a restraint of a substantial character to his medical practice. If so, the provision would be void.

This case highlights yet again the importance of ensuring that your employee agreements conform to local law. Contact your Vorys lawyer for assistance in how to do so.