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Did California Just Fire No-Employment Provisions From Settlement Agreements?

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Many employers who negotiate settlements to end a hard-fought battle with a former employee prefer an agreement that the employee will never work for them again. After all, it is perfectly understandable that after a company spends untold thousands in legal bills and severance wishes for complete closure on a difficult chapter, as well as some certainty that they won't have to worry about the possibility that the employee – now armed with settlement funds – would try another lawsuit based on a failure to hire claim. And, most employees have no interest in returning to work for a company that they just accused of breaking multiple laws. For the most part, these provisions have been upheld over time. Some EEOC lawyers have challenged them; but now, the Ninth Circuit has entered the fray, as it recently evaluated California's Business & Professions Code §16600. Multi-state employers who use noncompetes are probably already familiar with California Code §16600, which says, essentially, that any contract restraining an employee from engaging in a lawful profession, trade or business of any kind is void. In other words, noncompetes – for the most part – are unenforceable in California. But, the Ninth Circuit has recently taken a more expansive view of §16600, causing a ripple effect on the standard no-employment provision. In *Golden v. California Emergency Physicians*, Case No. 12-16514, an emergency room doctor decided to challenge a no-employment provision after he changed his mind about a settlement agreement. Although the trial court rejected the doctor's argument (it found he was not barred from competing against his old medical practice), the Ninth Circuit Court of Appeals reversed. The Ninth Circuit ruled that §16600 bars *any* contract that restrains someone from engaging in their lawful profession, trade or business and sent the case back to the district court to determine whether the no-employment provision constituted a restraint of a "substantial character" on the doctor's medical practice. In other words, to uphold the settlement agreement, the employer now must successfully demonstrate that prohibiting the doctor from working for their group would not impose a "substantial" restraint on his ability to practice his profession. For companies with employees beyond state lines, this case illustrates several key points. First, you can't simply assume that a settlement agreement will work in multiple states (and particularly, California). Second, employers should make sure that their settlement agreements – and particularly no-employment provisions – do not run afoul of local anti-competition statutes or laws. In that regard, California is perhaps the best known, but not only example of a state hostile to non-competes. Many other states, including some that employers may find surprising (such as North Dakota) have similar laws. Finally, employers should consult with their counsel to make sure that the terms of any settlement or severance

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