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PRACTICE GUIDE · EMPLOYMENT LAW

Restrictive Covenants and Trade-Secret Defense

Grand Park Law Group · 2026



A. **Bus. & Prof. Code § 16600 — The Categorical Prohibition**

California has voided employee non-compete agreements as a matter of public policy for more than a century. Cal. Bus. & Prof. 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."

The California Supreme Court foreclosed any "narrow restraint" exception in *Edwards v. Arthur Andersen LLP* (2008) 44 Cal.4th 937. *Edwards* held that section 16600 means what it says: a non-competition agreement, even one narrowly tailored to a particular geographic or temporal scope, is void unless it falls within one of three statutory exceptions (sale of business, dissolution of partnership, dissolution of LLC). *Id.* at 950. The Court rejected the Ninth Circuit's "narrow restraint" gloss from *Campbell v. Bd. of Trustees* (9th Cir. 1987) 817 F.2d 499.

Customer non-solicitation provisions sit in a more contested space. *AMN Healthcare, Inc. v. Aya Healthcare Services, Inc.* (2018) 28 Cal.App.5th 923 held that an employee non-solicitation clause restricting recruiters from soliciting traveling nurses was void under section 16600 because it operated as a restraint on the recruiters' practice of their profession. *Id.* at 939. *AMN* substantially undermined the older *Loral Corp. v. Moyes* (1985) 174 Cal.App.3d 268 line, and most plaintiff-side practitioners now treat employee non-solicits as presumptively void.

B. **AB 1076 and SB 699 (2024 Strengthening Amendments)**

The 2024 amendments converted section 16600 from a defense into an offensive weapon.

Senate Bill 699, codified at Cal. Bus. & Prof. Code § 16600.5, provides that a contract void under section 16600 is unenforceable regardless of where or when it was signed, and bars any employer from attempting to enforce a void non-compete. Section 16600.5(e) creates a private right of action: an employee, former employee, or prospective employee may sue for actual damages, injunctive relief, and reasonable attorneys' fees and costs. The statute thus permits affirmative litigation by California workers against employers who *assert* non-competes — including out-of-state employers seeking to enforce against California-resident employees.

Assembly Bill 1076, codified at Cal. Bus. & Prof. Code § 16600.1, required employers, by February 14, 2024, to send written individualized notice to current and former employees (employed after January 1, 2022) whose contracts contained void non-compete clauses, advising them that the clauses are void. Failure to provide that notice is itself an unfair competition law violation under Bus. & Prof. Code § 17200.

The combined effect is that California employees holding contracts with non-compete or broad non-solicit provisions now have multiple paths to relief: a declaratory judgment, attorneys' fees, and a UCL claim for inadequate notice.

C. The Sale-of-Business Exception (§ 16601)

The principal statutory exception to section 16600 is Bus. & Prof. Code § 16601, which permits a non-compete in connection with the sale of the goodwill of a business or substantially all of its operating assets and shares. The exception is narrowly construed; courts examine whether the seller actually transferred goodwill (as opposed to merely receiving wages or transaction proceeds) and whether the geographic and temporal scope of the restraint is reasonable in relation to the business sold. Equity grants in the ordinary course of employment do not trigger the exception, even where they include token "purchase" formalities.

D. Trade Secret Defense for Departing Employees

California's near-absolute hostility to non-competes does not extend to trade-secret protection. The California Uniform Trade Secrets Act (Civ. Code §§ 3426–3426.11) provides remedies for actual or threatened misappropriation, and injunctive relief can include limited prohibitions on a former employee working for a competitor where doing so would inevitably involve disclosure.

But California has firmly rejected the broader federal "inevitable disclosure" doctrine. *Whyte v. Schlage Lock Co.* (2002) 101 Cal.App.4th 1443 held that the inevitable-disclosure doctrine — which would allow an employer to enjoin a former employee from accepting employment with a competitor on the theory that disclosure of trade secrets was inevitable — is incompatible with the strong public policy of section 16600. *Id.* at 1462–63. To obtain injunctive relief, an employer must prove actual or threatened misappropriation, not merely the risk of it. Departing employees who carefully separate from confidential materials, decline to recruit former colleagues, and avoid working on substantially identical product matters typically have strong defenses.

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