



Tal K. Taylor, APC

## Client Alert

July 16, 2021

1217 Wilshire Blvd. #3418  
Santa Monica, CA 90403  
Tel (424) 291-2727  
tal@talktaylorlaw.com  
www.talktaylorlaw.com

### **NON-COMPETE AGREEMENTS ARE PROHIBITED IN CALIFORNIA**

On July 9, 2021, President Biden issued an Executive Order aimed at promoting competition in the American economy through banning or limiting the use of non-compete restrictions. The Order includes initiatives by numerous federal agencies to address issues relating to competition, such as making it easier for customers to secure refunds from airlines and making it simpler and cheaper to switch banks.

As to the labor market, the Order encourages the Federal Trade Commission to ban or limit non-compete agreements in employment contracts. However, in California non-compete agreements have long been prohibited. This is a good opportunity to review current California law on this important and controversial topic.

#### **What is a non-compete agreement?**

A non-compete agreement is also known as a “restrictive covenant” that limits an employee’s ability to take certain actions after departing from a company. This could include preventing the employee from working for a competitor or from performing all work of a certain nature for a specified period within geographical limitations.

#### **Are non-compete agreements enforceable in California?**

Generally, no. California treats non-compete agreements as void against public policy. State law expressly prohibits employers from restraining anyone “from engaging in a lawful profession, trade, or business of any kind...” Cal. Bus. & Prof. Code § 16600. Any agreements that violate this law can lead to injunctive relief and damages, including the recovery of attorney’s fees by employees who challenge their validity. However, a non-compete clause may still be enforceable against the seller of a business, a former business partner, or a former member of an LLC. Cal. Bus. & Prof. Code §§ 16601-16602.5.

#### **Can California employers still take measures to protect their trade secrets?**

Yes. While employers cannot interfere with a former employee’s general ability to participate in the labor market, this does not mean that the employee is free to use confidential data that may have been acquired during the employment period. This would include trade secrets and other proprietary information such as confidential customer lists.

#### **Can a non-compete agreement be implemented if the employment contract provides that out-of-state law governs the employment relationship?**

No. California prohibits employers from taking advantage of choice of law provisions to circumvent its well-settled non-compete prohibition. In any event,

President Biden's Executive Order is going to curtail other states' ability to enforce non-compete agreements, especially as many workers continue to work remotely nationwide.

**Takeaways**

It is important to review your existing employee contracts and company policies to ensure that they do not include unlawful non-compete agreements. Employers should still take affirmative steps to protect company trade secrets in a way that is consistent with California law and does not constitute an improper restraint on trade.