

CLIENT ALERT

A Nail in the Coffin? Another California District Court Finds That Employee Non-Solicitation Agreements Are Void Under California Law

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A federal district court in San Jose recently ruled, in *WeRide Corp., et al. v. Kun Huang, et al.*, that employee non-solicitation agreements are “void” under California Business & Professions Code section 16600 because such agreements are an invalid restraint on employment. This is the second federal court opinion this year that has barred enforcement of a post-employment non-solicitation agreement.

Background

For three decades, the law in California was that employee non-solicitation agreements were not prohibited by section 16600. In November 2018, that law became less certain when a California Court of Appeal decided *AMN Healthcare, Inc. v. Aya Healthcare Services, Inc., et al.* There, the Court held that former employees who were in the business of recruiting travel nurses could not be prohibited from soliciting nurses working at their former employer because such a prohibition would improperly restrain them from engaging in their chosen profession. Although *AMN Healthcare* called into question the continuing viability of case law permitting employee non-solicitation agreements, that decision could potentially be distinguished on the fact that travel nurses relied on recruiting to engage in their profession.

The viability of employee non-solicitation agreements in California was questioned again in January 2019, when another judge from the Northern District of California, sitting in San Jose, decided *Barker v. Insight Global, LLC, et al.* Judge Freeman found an employee non-solicitation agreement invalid under California law, relying on *AMN Healthcare’s* analysis of prior California state court decisions. As with *AMN Healthcare*, the decision in *Barker* could be distinguished because it also involved the recruiting business.

The *WeRide* Decision

WeRide is the first decision to state that employee non-solicitation agreements are void in California on facts that do not involve the business of recruiting. Judge Davila granted in part and denied in part *WeRide’s* motion for a preliminary injunction in a case involving a dispute between two companies involved in the development of autonomous vehicle technology. The district court granted the preliminary injunction based on *WeRide’s* claims of misappropriation of trade secrets against a competitor and one of its former employees. It declined, however, to issue an injunction on plaintiff’s claim of a breach of an employee non-solicitation agreement prohibiting the same employee from soliciting employees for one year after his employment ended.

The district court held that the employee non-solicitation agreement is “void under California law” under California Business & Professions Code section 16600 and that such a restraint on employment is “invalid.” Judge Davila recognized that the *AMN Healthcare* decision was based in part on the fact that it involved the business of recruiting but, citing *Barker*, stated that those facts do not abrogate or limit *AMN Healthcare’s* primary holding that employee non-solicitation clauses are invalid in California.

Judge Davila cited the *Barker* court’s reasoning that the “plain language” of section 16600 “prevents a former employer from restraining a former employee from engaging in his or her lawful profession, trade, or business *of any kind.*”

Implications for California Employers

We will not have certainty on the validity of employee non-solicitation agreements in California until the California Supreme Court weighs in. Although state courts are not bound by federal district courts on issues of state law, Judge Davila’s decision may influence other California state and federal courts considering similar cases.

In the wake of these decisions, employers should consider whether employee non-solicitation agreements advance important business interests in their specific circumstances. The lack of clarity concerning validity should inform a company’s risk assessment of continuing to include, or seeking to enforce, such clauses in employment agreements.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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