CALIFORNIA REFUSES TO ENCOURAGE NON-COMPETE AGREEMENT

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PROFESSIONALS

Kelly O. Scott

PRACTICE AREAS

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The California Court of Appeal recently held that California's laws prohibiting non-competition agreements invalidate a post-termination non-competition clause in an employment contract where the former employee is hired by a California competitor, even though the prior employer was out of state, the employee did not reside or work in California and the employment contract stated that it was governed by the laws of another state that permitted such restrictions. The Court ruled that California public policy prohibits non-compete agreements which limit the opportunities for persons to work for California employers even though these persons may never set foot in California.

Specifically, in The Application Group, Inc. v. The Hunter Group, Inc., 61 Ca1. App. 4th 881 (1998), the employment contract provided: "During the term of [employee's] employment, and for a period of [one year] after the date of its termination, [employee] agrees that [employee] will not render, directly or indirectly, any services of an advisory or consulting nature, whether as an employee or otherwise, to any business which is a competitor of [Hunter]." The contract also provided that it was to be "governed by and construed in accordance with the laws of the State of Maryland." In refusing to enforce these provisions, the Court of Appeal first ruled that California's interests outweighed Maryland's interests in choosing which states' law would apply to the agreement. The Court stated that California has a strong interest in protecting the freedom of movement of persons whom California employers wish to employ "regardless of the person's state of residence or precise degree of involvement in California projects." The Court further stated that this public policy ensures that California employers "will be able to compete effectively for the most talented, skilled employees in their industries, wherever they may reside." The Court commented that this freedom was important in the age of technology where employees in many industries can telecommute to work from anywhere.

Consistent with these strong public policy interests, the Court ruled that California Business & Professions Code Section 16600 prevented the enforcement of the non-competition section of the Maryland agreement

against the California employer. Section 16600 provides: "[E]very contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void." The Court noted that Section 16600 had previously been used to invalidate similar employment contracts which prohibited an employee working for a competitor when terminated, unless the prohibition was necessary to protect the prior employer's trade secrets.

The Court of Appeal decision in The Application Group, Inc. v. The Hunter Group, Inc. effectively allows California employers to fill jobs with employees who may reside in other states and who may be subject to non-compete restrictions which comply with the job candidate's state of residence; indeed, California employers may now have a competitive advantage over employers located in other states which would uphold such non-compete restrictions in employment contracts. California employers should be careful, however, to have counsel review the agreements in question to ensure that they are unenforceable and not subject to one of the exceptions to Business &Professions Code Section 16600. Further, the possibility of having to oppose an action filed in another state with jurisdiction over the employment contract must also be considered.

Employers May Be Required To Provide Equal Benefits For Mental Illnesses In Disability Policies

In a series of cases filed in New York, the District of Columbia and Pennsylvania, the Equal Employment Opportunity Commission (EEOC) has argued that an employer's disability insurance policy must provide the same benefits for mental conditions as other physical disabilities.

In one such case, an employee brought a claim against the Israel Discount Bank of New York based on the Americans with Disabilities Act (ADA). The employee, who suffered from depression, could only obtain limited coverage for his mental condition under the bank's insurance policy. Specifically, the policy limited coverage for depression to 24 months. Other physical disabilities covered employees through age 65.

The bank recently settled the lawsuit. Although the bank agreed to provide equal benefits for mental and physical disabilities, it denied liability. The financial terms of the settlement were not disclosed. As of this writing, no court has given an opinion on this issue. The EEOC, however, has indicated that it intends to pursue these cases with vigor. Accordingly, employers may wish to review their disability policies and contact their insurance agents to ensure that they are providing equal coverage for both mental and physical disabilities.