

RELEASES, CONFIDENTIALITY & NON-DISPARAGEMENT

What California employees should understand before trading claims and speech rights for severance.

THE ONE-SENTENCE RULE A severance agreement is not just a check. It is a bundle of promises. The expensive promises are often the ones that do not have a dollar sign next to them.

THE 60-SECOND CLAUSE REVIEW

Clause	Ask	Watch for	Negotiation goal
General release	Exactly which claims, parties, and time period are covered?	Affiliates, agents, unknown claims, contract/wage carve-outs.	Know what is released and preserve anything that should survive.
Civil Code §1542	Does the agreement expressly waive unknown claims?	A waiver expands the release beyond claims presently known.	Price the breadth; add express exceptions when appropriate.
Confidentiality	What must remain confidential: amount, facts, agreement, or everything?	Language that conflicts with California limits on silencing unlawful acts.	Limit confidentiality to lawful subjects and practical needs.
Non-disparagement	Is it one-way, vague, or tied to broad "harm" language?	A clause that can punish truthful discussion of unlawful acts.	Mutual, objective, lawful carve-outs, defined representatives.
Cooperation / restrictions	How much future time or career restraint is required?	Unlimited cooperation, uncompensated work, disguised noncompete.	Time limits, payment, notice, and California-compliant restrictions.

FIVE RULES THAT CHANGE WHAT A RELEASE CAN DO

1. Civil Code section 1542 protects unknown claims unless it is waived. The statute says a general release does not ordinarily extend to unknown claims that would have materially affected settlement. Many separation agreements expressly ask the employee to waive that protection. Civ. Code §1542 2. California protects discussion of unlawful acts. A separation agreement may not prohibit disclosure of information about unlawful acts in the workplace, and the statute requires protective language in covered agreements. Gov. Code §12964.5	3. Some confidentiality still can be lawful. California permits confidentiality of the severance amount and allows protection of trade secrets, proprietary information, and confidential information that does not involve unlawful acts. Gov. Code §12964.5 4. Post-employment restraints are not saved by creative labels. California broadly voids employment noncompetes outside statutory exceptions. A release clause should not quietly create a restraint that California law forbids. Bus. & Prof. Code §16600; <i>Edwards v. Arthur Andersen LLP</i> 5. A broad release can have broad consequences. The California Supreme Court has enforced general release language where the agreement showed the parties intended to cover the civil claim. Read scope and exceptions, not just the payment paragraph. <i>Jefferson</i>
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WHAT IS ROUTINE, WHAT IS NEGOTIABLE, AND WHAT DESERVES A RED PEN

Usually understandable	Negotiate / narrow	Red-flag questions
• Release through signing/effective date • Confidentiality of severance amount • Trade-secret protection • Reasonable return-of-property duties • Defined tax responsibility	• One-way non-disparagement • Unlimited cooperation • Broad affiliate/individual releases • Overbroad confidentiality • No-rehire language	• Waiving unpaid wage rights for no new value? • Restricting lawful future employment? • Penalizing reports to government? • Covering future claims? • Requiring false statements or concealment?

BEFORE YOU SIGN: CLAUSE-BY-CLAUSE CHECKLIST

- ☐ Release definition and released parties
- ☐ Civil Code §1542 waiver
- ☐ Confidentiality and statutory carve-outs
- ☐ Non-disparagement and who is bound
- ☐ Government/agency participation language
- ☐ Cooperation duties, duration, notice, payment
- ☐ No-rehire / noncompete / nonsolicit provisions

WHAT THE EMPLOYER WILL TEST	WHAT THE EMPLOYEE SHOULD SHOW
If the agreement needs three paragraphs to explain that you may still talk to your spouse, lawyer, accountant, and the government, somebody may have overachieved. Ask what document, witness, analysis, or contemporaneous explanation should exist if the company's position is genuine.	• Know what is released and preserve anything that should survive. • Price the breadth; add express exceptions when appropriate. • Limit confidentiality to lawful subjects and practical needs.

RELATED RUGGLES LAW FIRM READING

- [All Common Severance Agreement Clauses Explained](#)
- [Top 10 Things to Watch Out for in Severance Agreements](#)
- [How Do I Avoid Mistakes When Negotiating Severance?](#)
- [How to Negotiate Executive Severance Agreement Terms](#)

CALIFORNIA STATUTES / REGULATIONS • Civil Code section 1542 • Code of Civil Procedure section 1001 • Government Code section 12964.5	PUBLISHED CALIFORNIA CASES • Jefferson v. Department of Youth Authority, 28 Cal.4th 299 (2002) • Winet v. Price, 4 Cal.App.4th 1159 (1992) • Edwards v. Arthur Andersen LLP, 44 Cal.4th 937 (2008)
 SCAN TO READ All Common Severance Agreement Clauses Explained RugglesLawFirm.com	OFFICIAL RESOURCES Civ. Code §1542 Gov. Code §12964.5 B&P §16600

"section 16600 evinces a settled legislative policy in favor of open competition and employee mobility."

— Edwards v. Arthur Andersen LLP, 44 Cal.4th 937 (2008)

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