

# NONCOMPETES, NONSOLICITS & EXIT RESTRICTIONS

A California guide to post-employment restraints, lawful confidentiality, and the clauses that deserve close review before signing.

**THE ONE-SENTENCE RULE** California strongly protects employee mobility. The label on a clause does not control; the real question is whether it unlawfully restrains a person from engaging in a lawful profession, trade, or business.

## THE 60-SECOND EXIT-RESTRICTION SCREEN

| Clause                  | Core question                                                                            | California concern                                                           | Review goal                                         |
|-------------------------|------------------------------------------------------------------------------------------|------------------------------------------------------------------------------|-----------------------------------------------------|
| Noncompete              | Does it restrict work for a competitor or in an industry?                                | <b>Employment noncompetes are broadly void outside statutory exceptions.</b> | Remove or confirm a true statutory exception.       |
| Customer nonsolicit     | Does it bar doing business with former customers?                                        | <b>A restraint on lawful work may be vulnerable under section 16600.</b>     | Analyze effect, not the heading.                    |
| Employee nonsolicit     | Does it restrict recruiting or hiring former coworkers?                                  | <b>Broad restraints can implicate mobility principles.</b>                   | Narrow to lawful interests if any.                  |
| Confidentiality         | Does it protect trade secrets/confidential information or all knowledge and experience?  | <b>Lawful confidentiality is different from a noncompete.</b>                | Define protected information and lawful carve-outs. |
| Sale-of-business clause | Did the employee actually sell goodwill/ownership interests in a qualifying transaction? | <b>Section 16601 creates a specific exception.</b>                           | Confirm the transaction fits the statute.           |

## FIVE CALIFORNIA RULES ON POST-EMPLOYMENT RESTRAINTS

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. California broadly voids employment noncompetes. Business and Professions Code section 16600 states that contracts restraining a lawful profession, trade, or business are void to that extent and directs broad application in employment. B&P §16600<br>2. Employers may not insert unlawful noncompetes into employment contracts. Section 16600.1 makes it unlawful to include or require a noncompete that does not satisfy a statutory exception. B&P §16600.1 | 3. Void restraints stay void across state lines. Section 16600.5 states that a contract void under the chapter is unenforceable regardless of where and when it was signed and creates a private enforcement action. B&P §16600.5<br>4. There are narrow statutory exceptions. For example, section 16601 permits certain restraints tied to a qualifying sale of business goodwill or ownership interests. B&P §16601<br>5. California Supreme Court precedent rejects a narrow-restraint exception. Edwards held an employment noncompetition agreement invalid under section 16600 unless it falls within a statutory exception. Edwards v. Arthur Andersen LLP |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

# WHAT CAN FOLLOW YOU OUT THE DOOR - AND WHAT OFTEN CANNOT

| Usually suspect restraints                                                                                                                                                                         | Often legitimate interests                                                                                                                                                                                                 | Needs fact-specific review                                                                                                                                                                     |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"><li>• Post-employment noncompete • Industry-wide work ban • Competitor employment ban • Geographic work ban • Financial penalty for lawful competition</li></ul> | <ul style="list-style-type: none"><li>• Trade-secret protection • Return of company property • Narrow confidential-information duties • Invention / IP provisions within law • Reasonable transition obligations</li></ul> | <ul style="list-style-type: none"><li>• Customer nonsolicit • Employee nonsolicit • Sale-of-business restriction • Equity-related forfeiture language • Choice-of-law / forum clause</li></ul> |

## EXIT-RESTRICTION DOCUMENT CHECKLIST

- ☐ Offer letter and employment agreement
- ☐ Confidentiality / invention-assignment agreement
- ☐ Severance and release
- ☐ Equity or partnership documents
- ☐ Customer / employee nonsolicit language
- ☐ Choice-of-law and forum provisions
- ☐ Any sale-of-business or ownership transaction documents

| WHAT THE EMPLOYER WILL TEST                                                                                                                                                                                                     | WHAT THE EMPLOYEE SHOULD SHOW                                                                                         |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------|
| Changing the heading from "Noncompete" to "Please Don't Compete" does not create a statutory exception. Ask what document, witness, analysis, or contemporaneous explanation should exist if the company's position is genuine. | Remove or confirm a true statutory exception. • Analyze effect, not the heading. • Narrow to lawful interests if any. |

## RELATED RUGGLES LAW FIRM READING

- Top 10 Things to Watch Out for in Severance Agreements
- All Common Severance Agreement Clauses Explained
- How to Negotiate Executive Severance Agreement Terms
- Negotiated Exits for Executives

|                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                   |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| CALIFORNIA STATUTES / REGULATIONS <ul style="list-style-type: none"><li>• Business and Professions Code section 16600</li></ul>                                                                         | PUBLISHED CALIFORNIA CASES <ul style="list-style-type: none"><li>• Edwards v. Arthur Andersen LLP, 44 Cal.4th 937 (2008)</li><li>• Ixchel Pharma, LLC v. Biogen, Inc., 9 Cal.5th 1130 (2020)</li><li>• AMN Healthcare, Inc. v. Aya Healthcare Services, Inc., 28 Cal.App.5th 923 (2018)</li></ul> |
| <div><p>SCAN TO READ<br/>Top 10 Things to Watch Out<br/>for in Severance Agreements<br/>RugglesLawFirm.com</p></div> | OFFICIAL RESOURCES B&P §16600   B&P §16600.5   B&P §16601                                                                                                                                                                                                                                         |

*"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)

**LEGAL DISCLAIMER** | General educational information only - not legal advice. Reading or downloading this guide does not create an attorney-client relationship. Deadlines, exceptions, and outcomes depend on the facts and current law. Consult counsel about your situation.