

Legality of NonCompete Agreements in California

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Many companies seek to protect their business by requiring that employees sign agreements to not compete with the company should they leave employment. However, unlike in many other states, non-compete employment agreements are illegal in California.

Business and Professions Code § 16600 provides that "every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void." Section 16600 invalidates agreements to preclude employment in a certain line of work. The section has also been construed by California courts as invalidating agreements that seek to prevent former employees from accepting work from any of the former employer's clients. (*Morris v. Harris* (1954) 127 Cal.App.2d 476.) A former employee may also solicit employees from his or her former employer if unlawful means or acts of unfair competition are not used. (*Diodes, Inc. v. Franzen* (1968) 260 Cal.App.2d 244.)

A company is however, permitted to protect their trade secrets. One type of trade secret is a customer list. Generally speaking, if a company could prevent a former employee from using a customer list or trade secret to prevent unfair competition, the company can enforce an agreement that former employees will not use the confidential information. (*Metro Traffic Control, Inc. v. Shadow Traffic Network* (1994) 22 Cal.App.4th 853, 861.) For example, an employee could validly be required not to use a confidential list of preferred customers for one year after leaving employment. (*Gordon v. Landau* (1958) 49 Cal.2d 690.)

By comparison, though, even if a former employee cannot solicit his or her former employer's clients, merely informing customers of one's former employer of a change of employment, without more, is not solicitation. Neither is discussing business after being first invited by the former employer's customer. (*Hilb, Rogal & Hamilton Ins. Services v. Robb* (1995) 33 Cal.App.4th 1812, 1822.)

An exception to section 16600's prohibitions is when a shareholder sells or disposes of their stock. In a typical scenario, the owner of ABC company is bought-out by DEF company. DEF can validly protect its investment by requiring the former owner of ABC to sign a reasonable non-compete agreement. (Business & Professions Code § 16601.)

Another exception exists for partnerships. (Business & Professions Code § 16602.) Recent amendments to California include limited liability companies within the exception for business owners, and also create a new exception when an LLC dissolves. Brian Kindsvater is a California attorney and author. You can read more about noncompete agreements and California employment law by visiting <http://Lawzilla.com>, the premier resource for these issues.