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employee nonsolicitation provisions may no longer be lawful in california

MSK Client Alert

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In 2008, the California Supreme Court in *Edwards v. Arthur Andersen LLP* (2008) 44 Cal. 4th 937 set forth a broad prohibition against non-compete provisions, but left open the question of whether employee non-solicitation provisions are enforceable. A decade later, the California Court of Appeal for the Fourth Appellate District may have finally answered that question in the negative.

In *AMN Healthcare, Inc. v. Aya Healthcare Services, Inc.*, the California Court of Appeal held that employee nonsolicitation agreements—even if reasonable and narrowly tailored—are void, unless they fall within one of the narrow statutory exceptions specifically pertaining to the sale of a business or improper use of the employer's trade secrets. In *AMN*, the employer sought to enforce its employee nonsolicitation provision against four former AMN employees, who served as recruiters. AMN alleged that the former recruiters had solicited various nurses to leave their employment with AMN and work for the recruiters' new employer in clear violation of the nonsolicitation agreement. The recruiters countersued, and moved for summary judgment, alleging that the employee no solicitation provision violated Section 16600 of California's Business and Professions Code, which broadly prohibits contracts restraining an individual's right to engage in a lawful profession, trade, or business. The trial court granted summary judgment in favor of the recruiters. Affirming the trial court's grant of summary judgment, the Court of Appeal rejected AMN's reliance on the seminal case of *Loral Corp v. Moyes* (1985) 174 Cal. App. 3d 268, which had upheld a provision that restrained a former executive from "raiding" his former employer's employees, finding that such a provision was reasonable and limited.

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