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Noncompetition Agreements - Important Updates



In a recent case, Edwards v. Arthur Andersen, 2008, the California Supreme Court unanimously determined that a provision in an employment agreement restricting an employee from working for or soliciting his

ex-employer's customers was invalid under California Business & Professions Code § 16600, which contains a general prohibition for noncompetition agreements. The Court said that no "restraint" on lawful competition would be tolerated. Statutory exceptions related to the sale or dissolution of a business still exist.

Trade Secrets Exception. There is also case law providing that misappropriation of trade secrets information is an exception to § 16600. This may allow an employer to protect, by contract, information that is protectable under the Uniform Trade Secrets Act. Therefore, employers wanting to restrict their employees ability to compete should limit noncompetition provisions in their agreements to anything involving misuse of trade secrets, carefully define trade secrets, and have clear trade secret policies to en-

sure "trade secret" status for technological, customer, and other proprietary information. These policies should be distributed to employees through the company's employee handbook or other means, and must be enforced by the company. If information is not treated as a trade secret within the company, the availability of any "trade secret exception" may be lost. So, if you say your customer list is a trade secret, make sure it says so in your handbook, and that access to the list is password protected in your computer system and on employee's smart phones, etc.

What does this mean for current employment contracts? Employers should have all employment and confidentiality agreements reviewed to make sure that any noncompetition or nonsolicitation provisions are consistent with this Supreme Court ruling. There is a risk that if an agreement includes illegal provisions, a court may throw out the entire agreement. Therefore, if there is any doubt, employers should consider placing noncompetition provisions in a separate document, or add a very specific severability provision in an attempt to maintain the enforceable portion of the contract. Finally, review your written policies and your actual practices to protect a possible trade secret exception.

Success Story



One of Structure Law Group's clients was surprised to discover that a former employee had started a rival company offering services that were performed using the client's proprietary data and trade secrets. SLG sent a cease and desist letter on the client's behalf and was prepared to pursue legal action, including application for a temporary restraining order. After the former employee hired an attorney, SLG's attorneys were able to negotiate the former employee's surrender of the client's property and further received assurances regarding the non-use of the client's data and trade secrets, all while avoiding the expense of litigation. The former employee's rival company has since gone out of business.

Be Sure to Check Your Monthly Bank Statements



**Matthew Jensen,
Esq.**

Stories about financial fraud are in the headlines all the time. Just in December, news broke that Bernard Madoff, the head of one of the most respected New York investment houses, bilked \$50 billion from investors in a giant ponzi scheme.

However, what few of us realize is that financial fraud can occur on a smaller but more personal scale – in your bank account. While it is tempting to regard your monthly bank statements as little more than junk mail, it's imperative that you review your statements for unauthorized withdrawals before filing them away.

The federal Electronic Fund Transfer Act governs your liability and your bank's liability for thefts from your bank account. Such thefts typically occur when someone improperly acquires your ATM card or accesses your account via the Internet.

In the case of unauthorized withdrawals involving your ATM

card, you have two days to report the loss or theft of your card to your bank. If you do that, you will lose no more than \$50 and your bank should reimburse you for any unauthorized withdrawals exceeding that amount. However, if you fail to report the loss or theft of the card within two days, you could lose as much \$500.

The real danger in these situations arises if you don't bother to read your monthly bank statements. If you do not report an unauthorized transfer to your bank within 60 days after the statement was mailed to you, the bank is not liable for the loss. This rule can have harsh, far-reaching consequences, as one couple learned in 1991. Lawrence and Georgene Kruser waited 9 months to report an unauthorized withdrawal of \$20 to their bank. During the interim period, 47 additional unauthorized withdrawals totaling \$9,020 were made. Unfortunately for the Krusers, the court agreed with their bank that had they promptly reported the \$20 loss, the subsequent withdrawals would have been prevented, leaving the couple on the hook for \$9,040.



Tax Corner

- **Pay the LLC Fee Twice in 2009**

Thanks to California's budget woes, LLCs are now required to pay California LLC fees based on estimated amounts before the year is even half over. On April 15, 2009 all LLCs must pay the California annual franchise tax of \$800 for 2009, plus the gross receipt fee for 2008 revenue, as usual. However, the 2009 gross receipt fee will also be due this year, on June 15th. This means that on June 15, 2009, LLCs must estimate and pay their LLC fee based on gross receipts for all of 2009. To make it worse, if you underestimate, you could be subject to a penalty equal to 10% of the underpayment unless you qualify for a prior year exception.

- **Accelerated Estimated Taxes**

For years beginning January 1, 2009 corporate and individual taxpayers are now required to pay 30% of their annual California income taxes in each of the first two quarters and 20% in each if the last two quarters. For corporations, the first payment must still be at least the minimum tax of \$800.

- **New Electronic Funds Transfer Requirement**

All California tax payments made by an individual taxpayer on or after January 1, 2009 must be remitted electronically once the individual has either (1) made a single tax payment over \$20,000 for 2009 or later, or (2) files a return with a tax liability over \$80,000 for 2009 or later. This requirement could apply to 2008 amounts if paid after a 2009 electronic payment. [Source: Spidell's California Tax Letter 1/1/09 Vol 31.1]

- **Year End Payroll Reminders**

Jan 31 – CA year end reports due to EDD

Feb 2 – W-2s and 1099s due to recipients

Feb 2 – 2008 Q4 DE-6 due

Mar 2 – W-2 and W-3 due to SSA

1099 and 1096 due to IRS

New Year's Resolution - Complete Your Estate Plan!



Liza Hanks, Esq.

Now's your chance to get one really important New Year's Resolution crossed off that list: get your estate planning done! **Here's a special offer for any existing SLG client: five percent off the cost of creating a living trust or a will provided you book your first appointment by March 1, 2009!** Just let us know when you book that appointment and we'll be happy to reduce your fee.

Here's a list of the top five reasons why you should get it done:

Name guardians for your kids. If you don't, a judge will (and that judge doesn't know your brother's wife.)

Manage assets for your minor children. If you don't make an estate plan, and you die unexpectedly, your children will inherit everything you leave them when they turn eighteen years old—that's just too young.

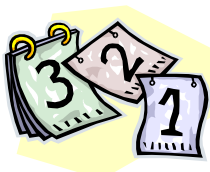
Minimize your estate tax liability. A well drafted estate plan will take maximum advantage of the estate tax credit so your family won't have to pay as much in taxes.

Avoid probate. A living trust allows you to pass assets to your children without having to pay 3-5% of your estate in probate fees and without making them wait up to 18 months to settle your estate.

Stop feeling guilty. Estate planning is like that earthquake kit you're supposed to have in the garage. None of us wants it to matter, but if your family needs it they'll be so glad that you had the foresight and love to put it together for them.

**Special Offer for existing clients of
Structure Law Group, LLP**

**Receive 5% OFF the cost of creating an
estate plan if your first estate planning
appointment is booked by March 1st.**



Reminders

- **No Texting While Driving**

Effective as of January 1, 2009, drivers are no longer allowed to perform any text based communication while driving. The law prohibits writing, sending or reading text-based communication including text messaging, instant messaging and email on a wireless device or cell phone while driving. The fines will be the same as those fines for not using a hands free device - \$20 for the first offense and \$50 for subsequent offenses.

- **U.S. Employers Must Accept New Passport Card**

Employers must now accept the new wallet-sized passport card as an acceptable form of documentation when completing the I-9 form. The card cannot be used for international travel but is intended to make processing easier for U.S. citizens traveling to Canada, Mexico or the Caribbean.

Now is the Time!

- **Review Employment Agreements**

With recent changes to noncompetition and nonsolicitation laws, this is the time to review all of your employment contracts, in particular those with noncompetition and nonsolicitation clauses. Failure to have updated clauses in agreements could result in costly litigation and the loss of other contractual rights.

- **Review Employee Handbooks**

Many new employment laws went into effect as of January 1, 2009. Employers should have their employee handbooks reviewed to ensure that they are in compliance with the new laws. If you need an employee handbook or want yours reviewed, call us.

- **Corporate Minutes**

With a potential increase in litigation matters arising out of recent employment law changes, it is important to confirm that corporations are in compliance with their annual obligations to prevent a piercing of the corporate veil and potential liability to shareholders.





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Dates To Remember

- | | |
|-------------|--|
| February 1 | Super Bowl Sunday |
| February 9 | Lincoln's Birthday—some courts and government offices closed |
| February 14 | Valentine's Day |
| February 16 | Presidents Day—courts and government offices closed |
| March 8 | Daylight Savings Begins |
| March 17 | St. Patrick's Day |

Did You Know? Some Super Bowl Fun Facts

- The footage tape of the Super Bowl I game no longer exists. It was taped over.
- The average cost for a 30-second commercial spot during Super Bowl I was \$42,000.
- A 30-second commercial for the 2009 Super Bowl will cost \$3 million.
- The first Super Bowl commercial to become famous was a Noxzema commercial with Joe Namath in 1974.
- Six percent of people call in sick to work on the Monday after Super Bowl.
- No Super Bowl has ever gone into overtime.

We appreciate your referrals!



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