CALIFORNIA RESTRICTIVE EMPLOYMENT COVENANTS AFTER EDWARDS

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INTRODUCTION

Business & Professions Code § 16600 provides a simple rule: "Except as provided in this chapter, every contract by which anyone is restrained from engaging in a lawful profession, trade or business of any kind is to that extent void." The statutory exceptions immediately follow, applying to noncompetition agreements signed in connection with a sale of corporations or partnerships.

This statute was originally enacted in 1872 as section 1673 of the Civil Code, expressing the California legislature's rejection of the "rule of reason" that had arisen in the common law as an exception to the general prohibition on contracts in restraint of trade.[1] It reflects a public policy so profound that California courts have consistently overridden contractual choice of law provisions that would allow enforcement under the law of a sister state.[2]

As a result, California courts have applied the law to condemn a wide variety of contractual restrictions that affect an individual's ability to move freely from job to job.[3]

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[1] *Bosley Medical Group v. Abramson*, 161 Cal.App.3d 284, 288 (1984); *Hill Medical Corp. v. Wycoff*, 86 Cal.App.4th 895, 900-901 (2001) ("Section 16600 presently sets out the general rule in California – covenants not to compete are void."). See also *Scott v. Snelling and Snelling, Inc*., 732 F.Supp. 1034, 1042 (N.D. Cal. 1990) (although "a number of states have abandoned the common law prohibition of covenants restraining competition in the employment agreement context, adopting instead a balancing approach even in the face of statutes like 16600 . . . [,] California courts have been clear in their expression that section 16600 represents a strong public policy of the state which should not be diluted by judicial fiat.").

[2] See, e.g., *Frame v. Merrill Lynch*, 20 Cal.App.3d 668, 673 (1971); *Ware v. Merrill Lynch*, 24 Cal.App.3d 35, 43 (1972), *aff'd sub nom. Merrill Lynch v. Ware*, 414 U.S. 117, 139-140 (1973) ("California has manifested a strong policy of protecting its wage earners from what it regards as undesirable economic pressures affecting the employment relationship."); *Application Group, Inc. v. Hunter Group, Inc*., 61 Cal.App.4th 881, 902 (1998).

[3] See, e.g., *Application Group, supra*; *Bosley, supra*; *Chamberlain v. Augustine*, 172 Cal. 285, 288-289 (1916); *Fortna v. Martin*, 158 Cal.App.2d 634, 638 (1958); *Frame, supra*; *Golden State Linen Service, Inc. v. Vidalin*, 69 Cal.App.3d 1, 12 (1977); *Gordon Termite Control v. Terrones*, 84 Cal.App.3d 176, 179 (1978); *Hill Medical Corp*., supra; *Hunter v. Superior Court*, 36 Cal.App.2d 100, 114 (1939); *Kolani v. Gluska*, 64 Cal.App.4th 402, 407 (1998); *Metro Traffic Control, Inc. v. Shadow Traffic Network*, 22 Cal.App.4th 853, 859-860 (1994); *Morey v. Paladini*, 187 Cal. 727, 736 (1922); *Morris v.*

For similar policy-based reasons, California courts have held that an employer commits an act of wrongful discharge when firing an employee for refusing to sign a non-competition agreement.[4]

The legislature has amended various portions of the statute in 1945, 1963 and 2002, without changing the prohibitory language or questioning its interpretation by California courts as a broad prohibition against all forms of restraints which are not expressly allowed. Nevertheless, beginning in 1987, the Ninth Circuit developed a different view of § 16600, holding that it applied only to complete prohibitions against practicing a trade or profession, and that any lesser restraint was acceptable. That view, reflected in a short line of published cases,[5] became known as the "narrow restraint exception." In this article we will explore the California courts' interpretation of the statute, and how the Ninth Circuit came to such a contradictory view, recently rejected by the California Supreme Court in *Edwards v. Arthur Andersen LLP*.[6] We will also examine the so-called "trade secret exception" (justifying restrictive covenants meant to protect confidential information) and explain why it is legally unsound, although the *Edwards* court chose not to address that issue. Finally, we will suggest practical lessons to be taken from the Court's opinion, as well as strategies that might be employed to protect trade secrets in light of *Edwards*.

THE NINTH CIRCUIT "NARROW RESTRAINT EXCEPTION"

The "narrow restraint exception" comes from a trio of Ninth Circuit cases beginning with *Campbell v. Trustees of Leland Stanford Jr. Univ*.[7] *Campbell*, while recognizing that California had rejected the rule of reason in enacting section 16600, nevertheless found what it thought was support for a roughly equivalent exception. It relied on *Boughton v. Socony Mobil Oil Co.,*[8] for the proposition that the statute did not apply "where one is barred from pursuing only a small part of [a] business, trade or profession."[9] Inexplicably, *Campbell* did not address the contrary holdings of

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Harris, 127 Cal.App.2d 476, 478 (1954); *Muggill v. Reuben H. Donnelley Corp*., 62 Cal.2d 239, 242-243 (1965).

4 See, e.g., *D'Sa v. Playhut, Inc*., 85 Cal.App.4th 927, 933 (2000) and *Thompson v. Impaxx, Inc*., 113 Cal.App.4th 1425 (2003).

5 *Campbell v. Trustees of Leland Stanford Jr. Univ*., 817 F.2d 499 (9th Cir.1987); *General Commercial Packaging, Inc. v. TPS Package Engineering, Inc*., 126 F.3d 1131, 1133 (9th Cir. 1997); and *Int'l Bus. Mach. Corp. v. Bajorek*, 191 F.3d 1033, 1041 (9th Cir. 1998).

6 44 Cal.4th 937 (2008).

7 817 F.2d 499 (9th Cir.1987).

8 231 Cal.App.2d 188 (1964).

9 817 F.2d at 502.

Chamberlain and *Morey*, or its own precedent in *Davis v. Jointless Fire Brick Co.*,[10] which had expressly followed *Chamberlain* in rejecting a "partial restraint" argument. But in any event its reliance on the *Boughton* dictum was misplaced, since *Boughton* had relied for its "small or limited part" exception on *King v. Gerold*,[11] a case that even the *Campbell* court found to hold no such thing.

From this inauspicious beginning the "narrow restraint exception" took root in Ninth Circuit jurisprudence with an unusual deference to its questionable provenance. In *General Commercial Packaging, Inc. v. TPS Package Engineering, Inc.*,[12] the court cited to the "rule of *Campbell*." Again, it ignored the California Supreme Court's rulings in *Chamberlain* and *Morey*. It did so a third time in *Int'l Bus. Mach. Corp. v. Bajorek*,[13] concluding that Ninth Circuit, not California, precedent bound the court to follow the "narrow restraint" exception it had created: "We are not free to read California law without deferring to our own precedent on how to construe it. . . . Because of the limited scope of the restriction [against working for a competitor], we are bound to hold, under *Campbell*, *General Commercial Packaging*, and *Smith*, that the covenant did not violate section 16600."[14]

CALIFORNIA LAW ON THE MEANING OF "RESTRAINT"

It is rare that a federal circuit court, charged with following interpretations of the state whose law it must apply, will get it utterly wrong. It is particularly curious that this anomaly occurred here with respect to an issue where the state decisional law was so robust and clear. In *Chamberlain v. Augustine*,[15] and again in *Morey v. Paladini*,[16] the California Supreme Court declared long ago that there was no such thing as a "partial restraint" under the predecessor to section 16600. In *Chamberlain*, the covenant barred defendant for three years from any involvement in a business "similar" to the foundry whose stock he had sold. The plaintiff argued that the restriction was limited to the states of California, Washington, and Oregon; that the defendant could work as a "laborer or molder" in certain designated foundries; and that the covenant was therefore "only a partial restraint". The argument was easily rejected: "The statute makes no exception in favor of contracts only in partial restraint of trade."[17]

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[10] 300 F. 1, 3 (9th Cir. 1924).

[11] 109 Cal.App.2d 316 (1952).

[12] 126 F.3d 1131, 1133 (9th Cir. 1997).

[13] 191 F.3d 1033, 1041 (9th Cir. 1998).

[14] 191 F.3d at 1041.

[15] 172 Cal. at 289.

[16] 187 Cal. at 738.

[17] 172 Cal. at 289.

In *Morey*, the alleged agreement was with a lobster fishery to sell only to a single purchaser in northern California, Oregon, Washington and Nevada, who in return promised to buy a large amount of lobsters on a continuing basis. When sued for failure to buy, the purchaser argued the contract was illegal. Observing that "the contract was one which would result in at least a partial restraint of trade",[18] the California Supreme Court agreed it was unlawful, since "[t]he statute (Civ. Code, sec. 1673) makes no exception in favor of contracts only in partial restraint of trade."

Any covenant not to work for a competitor is a "partial" or "narrow" restraint, since the typical employee can ply his or her skills in other ways. A carpenter might leave a homebuilder to work for theaters building sets; a stockbroker may want to become an investment adviser. Yet as noted above, California courts have repeatedly held that post-employment non-competition agreements run afoul of section 16600.[19]

THE EDWARDS DECISION

The noncompetition agreement Edwards was required to sign restrained him for 18 months from performing work for clients he had previously serviced and for 12 months soliciting any client of the office where he worked. Andersen defended it under the "narrow restraint exception" articulated by the Ninth Circuit, arguing that Edwards was free to perform any number of other accounting jobs. Confronting directly the conflict between that perspective and the long line of California appellate authority described above, the Supreme Court held that the Ninth Circuit was wrong, and there was no such exception available under § 16600. It observed that "no reported California state court decision has endorsed the Ninth Circuit's reasoning," and emphasized that state courts "'have been clear in their expression that section 16600 represents a strong public policy of the state which should not be diluted by judicial fiat.'"[20] Indeed, the opinion relied on a plain meaning analysis and found the statute unambiguous in its use of "restrained."

In one sense, *Edwards* is not a watershed opinion. It created no new law in California courts, opting instead to reaffirm long-standing rules. But by laying to rest the Ninth Circuit's "narrow restraint" exception, *Edwards* took an important step in reaffirming the strength of California's policy against covenants not to compete. We discuss the importance of that policy below.

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[18] 187 Cal. at 736,

[19] *Muggill v. Reuben H. Donnelley Corp*., 62 Cal.2d at 243 (1965), (section 16600 "invalidates provisions in employment contracts prohibiting an employee from working for a competitor after completion of his employment . . . ."); *Gordon Termite Control v. Terrones*, supra, 84 Cal.App.3d at 179; *Morris v. Harris*, 127 Cal.App.2d at 478 (rejecting an argument that the contract was "only a restriction and not a restraint").

[20] 44 Cal.4th at 949, quoting from Scott v. Snelling and Snelling, Inc., 732 F.Supp. 1034 (N.D.Cal. 1990).

CALIFORNIA' POLICY PROMOTES INNOVATION

California's long-standing ban on employee covenants not to compete is a centerpiece of state innovation policy, and it is perhaps the most important reason why California has enjoyed its leading position in the technology industries over the past 25 years.

Most states other than California enforce employee covenants not to compete. The fact that California does not enforce them has led to what Alan Hyde has called a "high-velocity labor market": one in which employees can and do change jobs with some frequency.[21] The ability to leave a job and continue to work in one's chosen profession – something taken for granted in California but subject to significant restrictions elsewhere – obviously benefits employees, who are not bound to bad jobs by fear that they will be unemployable or at least underemployed if they choose to leave. But less obviously, it also benefits employers and the economy as a whole. While employers whose employees want to leave may have a short-term, selfish interest in making it hard for them to do so, those same employers benefit in the long run by being able to hire new employees away from competitors without fear of legal sanction. And perhaps most important, California's rule protecting the freedom of departing employees to compete encourages employees who think they can build a better mousetrap (or a better computer chip or search engine) to start a new company to do just that.

Those start-ups have contributed enormously to the California economy, to such an extent that regions all over the world have sought to emulate Silicon Valley. But as a number of legal and economic studies have shown, those efforts to be like Silicon Valley have failed.[22] Notably, work by legal scholars and social scientists suggest that Silicon Valley has succeeded where others have failed in significant part *because* of California's rule prohibiting employee covenants not to compete, which led to high rates of employee mobility.[23] The explanation is straightforward: start-ups drive new innovation. The

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[21] Alan Hyde, **Working in Silicon Valley: Economic and Legal Analysis of a High-Velocity Labor Market** (2003).

[22] Annalee Saxenian, **Regional Advantage: Culture and Competition in Silicon Valley and Route 128** (1994).

[23] *See, e.g.*, Saxenian, *supra*, at 34-35, 161–68 (documenting the high rates of employee mobility in Silicon Valley, and attributing the success of innovation in the Valley in part to that difference); Ronald J. Gilson, *The Legal Infrastructure of High Technology Industrial Districts: Silicon Valley, Route 128, and Covenants Not to Compete*, 74 **N.Y.U. L. Rev.** 575, 577–78 (1999); Bruce C. Fallick et al., *Job Hopping in Silicon Valley*, 88 **Rev. Econ. Stat.** 472 (2006) (providing empirical support for the Saxenian-Gilson argument); Fredrik Andersson et al., *The Effect of HRM Practices and R&D Investment on Work Productivity*. http://web.mit.edu/ipc/sloan05/HRM_R&D_Andersson_et_al.pdf; Rob Valleta, *On the Move: California Employment Law and High-Tech Development*, Fed. Res. Bank of San Francisco Econ. Ltr. No. 2002-24 (Aug. 16, 2002).

biggest source of start-ups is employees who depart from existing companies.[24] Those new companies grow, employing workers, developing better products, and contributing to the state's economic growth. They in turn spawn new companies as employees depart the companies that were once start-ups and develop their own new companies and products. The economy as a whole benefits from this cycle of innovation.

Those who argue for restrictions on employee mobility and the development of start-ups generally worry that existing companies will lose incentives to innovate if departing employees can take their know-how and compete with them. There are three answers to this objection. First, section 16600 does nothing to prevent the enforcement of trade secret law. Companies who choose to do so can enforce their statutory rights under Cal. Civ. Code § 3426 to ensure that departing employees cannot use a former employer's trade secrets. What they cannot do is prevent employees from competing even when those employees do not use any trade secrets. It is that freedom that has made Silicon Valley possible.

Second, it is not corporations per se but the individuals who work for them who come up with new ideas. An employee who cannot start a new business cannot profit from an entrepreneurial idea, and so has less incentive to try to develop new ideas for an existing employer. An important benefit of a high-velocity labor market like California's is that it provides the maximum incentive to individuals to invent and pursue new ideas.

Third, the benefits of the "spillovers" of ideas that come with employee mobility are large enough to outweigh any harm to former employers, and indeed so great that even the former employers themselves benefit from California's high-velocity labor market. A wealth of economic evidence teaches us that these spillovers are good for society. Far from interfering with incentives, empirical evidence suggests that these spillovers actually drive further innovation. Industries with significant spillovers generally experience more and faster innovation than industries with fewer spillovers.[25] Dietmar Harhoff finds empirical evidence that firms in high-technology industries (the most innovation-intensive ones) are likely to increase rather than decrease their

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[24] *See* Hyde, *supra*, at 31-32 (reporting a study of hard-drive manufacturing, in which departing-employee start-ups accounted for over 99% of start-up revenue).

25. See, e.g., Dietmar Harhoff, *R&D Spillovers, Technological Proximity, and Productivity Growth—Evidence from German Panel Data*, 52 **Schmalenbach Bus. Rev.** 238, 258 (2000) ("High-technology firms react more sensitively to spillovers in terms of their R&D spending, and their direct marginal productivity gain from spillovers (in excess to the effect from enhanced R&D spending) is considerably larger than the respective gain for less technology-oriented firms."). Indeed, the positive relationship is so strong that some economists use spillovers as a measure of innovation! See Tobias Schmidt, *An Empirical Analysis of the Effects of Patent and Secrecy on Knowledge Spillovers* 1 (Ctr. for Eur. Econ. Res., Discussion Paper No. 06-048, 2006), available at ftp://ftp.zew.de/pub/zew-docs/dp/dp06048.pdf.

investment in research and development in the face of significant intra-industry spillovers.[26]

The computer industry shows this dynamic at work Both Annalee Saxenian and Ron Gilson have shown that spillovers drove innovation in that industry: Silicon Valley thrived while Boston's Route 128 withered in the 1980s and 1990s in significant part because employees and knowledge moved freely to new companies in Silicon Valley, but not in Boston.[27] And as Alan Hyde puts it, no shortage of innovation resulted:

> In California, employees are normally free to change jobs without a lawsuit alleging . . . breach of a covenant not to compete. There is no evidence of any social harm from this. In particular, there is no evidence that firms lack incentives to invest in the production of information.[28]

REMAINING ISSUES: THE "TRADE SECRET EXCEPTION"

The *Edwards* court declined to address the "trade secret exception" because the issue had not been properly preserved.[29] But there may be significance in the reference to it as "the so-called trade secret exception."

"So-called" is right: there is no such thing as a trade secret "exception" to section 16600. The notion of an exception arises from *Gordon v. Landau*. That case considered a covenant directed at misuse of a route salesman's account cards, which carried detailed information about each customer and their buying habits. The Court noted that the restriction did not prevent lawful competition, but was directed at use of these "confidential lists to solicit customers" after leaving employment. This decision was cited in *Muggill*, creating the so-called "trade secret exception".[30]

This so-called "exception" cannot properly be viewed as such, since it only applies to activity, like misuse of trade secrets or breach of fiduciary duty, that the law would prohibit in the absence of a contract. It follows that any contract that also prohibits such activity is not a "restraint" of a "*lawful* profession, trade or business."[31]

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[26] Harhoff, *supra*, at 258.

[27] See Saxenian, *supra*, at 161–68; Gilson, *supra*, at 577–78.

[28] Hyde, *supra*, at 43.

[29] 44 Cal.4th at 946, n.4.

[30] 62 Cal.2d at 242 (section 16600 invalidates non-competition agreements "unless they are necessary to protect the employer's trade secrets").

[31] This does not mean that such contracts are entirely superfluous, since they serve important collateral purposes, such as establishing a confidential relationship, defining its subject matter, and proving reasonable efforts to protect trade secrets. See Pooley, Trade Secrets, § 8.02[2] (Law Journal Press). Moreover, contracts can specify additional remedies for misappropriation. See also Uniform Trade Secrets Act, Civ. Code § 3426.7(b) (contractual *remedies* not displaced).

These cases, in other words, stand for nothing more than the straightforward proposition that section 16600 doesn't void or preempt the operation of California trade secrets law.

The dictum from *Muggill*, however, has been repeated without much analysis in a number of subsequent cases.[32] If there is any "trade secret exception" in modern law, it means only that *nondisclosure* agreements are valid under section 16600.[33]

No California case has ever upheld a *noncompetition* agreement because of a "trade secret exception." In effect, the "exception" merely reflects the well-accepted notion that "'the employer will be able to restrain by contract only that conduct of the former employee that would have been subject to judicial restraint under the law of unfair competition, absent the contract.'"[34]

In any event, any trade secret "exception" in modern parlance must take account of the more robust protection afforded secret information under the Uniform Trade Secrets Act, Civil Code § 3426. Before enactment of that statute, California common law on trade secrets was based largely on the Restatement (First) of Torts, which defined trade secrets relatively narrowly, excluding "emphemeral" information such as unpublished bids, and "negative" information such as the results of unsuccessful experiments.[35] Even if one might have argued the need for supplemental contractual

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[32] See, for example, *Scott v. Snelling & Snelling*, 732 F.Supp. 1034, 1043 (N.D. Cal. 1990) (declining to enforce non-competition agreement); and *Fowler v. Varian Associates, Inc*., 196 Cal.App.3d 34, 43-44 (1987) (no non-competition covenant involved).

[33] See *Kolani v. Gluska*, 64 Cal.App.4th 402, 407 (1998) ("Narrower contractual restraints on a departing employee, which prohibit him/her from using confidential information taken from the former employer, have been held to be lawful." [citing *Gordon v. Landau*, 49 Cal.2d at 694]); *Readylink Healthcare v. Cotton*, 126 Cal.App.4th 1006, 1022 (2005) ("Misappropriation of trade secret information constitutes an exception to section 16600.")].

Dictum from one case, *Loral Corp. v. Moyes*, 174 Cal.App.3d 268, 275 (1985), suggests that "contractual restrictions may have more impact in a non-solicitation case than a nondisclosure case." But the analysis in *Loral* (and in a case that cited it, *John F. Matull & Assoc., Inc. v. Cloutier*, 194 Cal.App.3d 1049 (1987)) was flawed; see Pooley, *Restrictive Employee Covenants in California*, 4 Santa Clara Comp. & High Tech. L.J. 251, 264-276 (1988). A more recent case, *Thompson v. Impaxx, Inc., supra*, 113 Cal.App.4th at 429-430, reaffirms that nonsolicitation covenants are enforceable only to the extent that misuse of trade secrets is involved.

[34] *Metro Traffic Control, Inc. v. Shadow Traffic Network*, 22 Cal.App.4th 853, 861 (1994) (quoting Hays, *Unfair Competition – Another Decade*, 51 Cal.L.Rev. 51, 69); see also *Hollingsworth Solderless Terminal Co. v. Turley*, 622 F.2d 1234, 1338 (9th Cir. 1980) (same).

[35] See Restatement (Third) of Unfair Competition § 39, comment d. Cf. *Winston Research Corp. v. Minnesota Mining & Mfg. Co*., 350 F.2d 134, 144 (9th Cir. 1965) (in

protection of information when trade secret law was narrower, such arguments have no force today, when the extremely broad statutory definition of a trade secret covers virtually all nonpublic information that a business may want to protect.[36] The important conclusion from this development is that there is no justification for seeking contractual protection for information that does not qualify as a trade secret under the UTSA, since such information is undeserving of any protection at all.

LESSONS FOR PRACTITIONERS

The message of *Edwards* is clear: noncompetition and nonsolicitation covenants are not enforceable in California unless they fall within one of the statutory exceptions relating to a sale of a corporation or partnership interest. But promises not to use trade secrets – including use in connection with otherwise lawful competition or solicitation – should be enforceable. Therefore, the first lesson is to conduct a thorough review of existing employment agreement to make sure that they comply with the strict philosophy reflected in the Edwards case. This is not merely an issue of ensuring enforceability; an employer can also be held liable for insisting on employment contracts that don't comply.[37]

Companies with operations outside California may be tempted to use choice of forum and choice of law clauses to ensure that more familiar and comfortable remedies are available. However, be aware that California courts will reach out on behalf of not just individual employees but also their new employers, to apply what is viewed as a fundamental policy of the state.[38] Where extremely important employees are involved, it may be necessary to engage in a "race to the courthouse" and hope that the non-California court issues its decision first.[39] A broader approach may lie in employee

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pre-UTSA decision, held information about problems with company's machine cannot qualify as trade secret).

[36] See *Warner and Co. v. Solberg*, 634 N.W.2d 65, 72 (N.D. 2001) (applying North Dakota statute similar to section 16600, and in reference to California decisional law, finding that since enactment of the UTSA the "need to create a judicial exception . . . may now be questioned.").

[37] See, e.g., *D'Sa v. Playhut, Inc*., 85 Cal.App.4th 927, 934 (2000) (employee terminated for refusing to sign unlawful noncompetition agreement can sue for wrongful discharge").

[38] See, e.g., *Application Group, Inc. v. Hunter Group, Inc*., 61 Cal. App. 4th 881, 885 (1998) (applying California law to invalidate a noncompetition covenant valid under Maryland law, entered into by a Maryland resident who agreed to "telecommute" for a California company).

[39] See *Advanced Bionics Corp. v. Medtronic, Inc.*, 29 Cal. 4th 697 (2002) (former employee moved to California to work for a California employer and filed action in California court one day before former employer filed action in Minnesota).

arbitration agreements that call for proceedings outside California. It remains unclear whether those agreements will be enforceable under California law, or whether California courts would give effect to decisions of other jurisdictions enforcing such arbitrations.[40]

One possible path to avoiding California's ban on restrictive covenants may lie in ERISA. The Ninth Circuit has held that ERISA preempts state law on such clauses in qualifying plans, allowing enforcement of forfeiture provisions.[41] But whether or not this is correct as a matter of ERISA law, the tail seems to be wagging the dog if the principle is applied to covenants not to compete conditioned on employment contracts more generally.

In appropriate circumstances businesses can rely on other means to protect the integrity of their interests and information – though not to foreclose employee competition altogether. For example, claims for breach of fiduciary duty can be quite effective against officers or managers who divert employees or business they had been entrusted with.[42] And employees at any level have a duty of loyalty while employed to act only on behalf of the employer.[43] Finally, the company's focus should turn to its trade secret protection plan, emphasizing education, documentation, and careful hiring and termination practices.[44]

Ultimately, though, businesses need to accept the idea that restrictive employee covenants are not available in California. Innovative companies should celebrate this rule rather than try to circumvent it. For it enables them to hire new employees, and it enables the rapid growth of the high-tech economy.

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[40] See *Jones v. Humanscale, Inc.*, 130 Cal.App.4th 401 (2005) (although New Jersey arbitrator mistakenly applied that state's law to enforce a noncompetition covenant, the award was upheld because of narrow grounds for review).

[41] See *Clark v. Lauren Young Tire Ctr. Profit Sharing Trust*, 816 F.2d 480, 481 (9th Cir. 1987).

[42] See, e.g., *Bancroft-Whitney Co. v. Glen*, 64 Cal.2d 327 (1965).

[43] *Fowler v. Varian Assocs.*, 196 Cal.App.3d 34 (1987).

[44] See Pooley, Trade Secrets § 9 [INSERT SECTION] (Law Journal Press).