THE BAR ASSOCIATION OF SAN FRANCISCO

Advising California Clients on Restrictive Covenants

April 18, 2018

BASF Conference Center
301 Battery Street, 3rd Floor
San Francisco, California

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- **Many companies use various agreements aimed at the following:**
  - **Protecting against competitive injury (non-compete agreements; garden leave agreements)**
  - **Protecting relationships with particular customers (non-solicit agreements)**
  - **Protecting relationships with employees (non-solicit agreements; no-hire agreements)**
  - **Protecting trade secrets, confidential information, proprietary information (confidentiality agreements)**
- **Restrictive covenants frequently used limit a person's right to:**
  - **Work in a competitive position**
  - **Solicit clients/customers with whom they worked at a company**
  - **Solicit employees to the company**
  - **Disclose or use confidential/proprietary information belonging to that company, relating to that company, or concerning clients/customers of that company**
  - **Criticize or make disparaging statements about the company**

- **Non-Compete Agreements**
  - **Employer may prohibit an employee from competing during employment (Cal. Lab. Code & 2863** (("An employee who has any business to transact on his own account, similar to that intrusted to him by his employer, shall always give the preference to the business of the employer."); *Angelica Textile Services, Inc. v. Park*, 220 Cal. App. 4th 495, 509 (2013))
    - **But employee may prepare to compete while still employed** (*Fowler v. Varian Assocs.*, 196 Cal. App. 3d 34, 41 (1987))
  - **With very limited exception, an employer cannot prohibit an employee from competing after the employment ends** (Cal. Bus. & Prof. Code § 16600)
  - **Section 16600 broadly prohibits all agreements that restrain one's ability to engage in his/her profession, even if they do not entirely preclude the person from competing**
    - *Edwards v. Arthur Andersen*, LLP, 44 Cal.4th 937 (2008)(rejecting narrow restraint theory)

- **Non-Compete Agreements**
  - **Section 16600 goes further than simply prohibiting non-competes** ("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.")
    - **Prohibits customer non-solicits** (*Edwards v. Arthur Andersen*, LLP, 44 Cal.4th 937 (2008))
    - **Prohibits "darken the doorstep" provisions** (*Golden v. Cal. Emergency Physicians Med. Group*, 782 F.3d 1083 (9th Cir. 2015))

- **Non-Compete Agreements: Exceptions**
  - **Permissible non-compete in employment context**
    - **California law allows a non-compete agreement executed as part of sale of goodwill in a business or sale of corporate shares** (Cal. Bus. & Prof. Code §16601)
    - **For employees owning shares in company, exception may apply**
      - **Check employment agreement and shareholder agreement**
    - **Exception applies only where shareholder sells *all* of his/her shares** (*Vacco Industries, Inc. v. Van Den Berg*, 5 Cal. App. 4th 34, 47 (1992))
    - **Applies to sale of shares or exchange in merger** (*Hilb, Rogal & Hamilton Ins. Services v. Robb*, 33 Cal. App. 4th 1812, 1825 (1995))
    - **Exception may apply only to *substantial* shareholders** (*Bosley Medical Group v. Abramson*, 161 Cal. App. 3d 284, 290 (1984))
      - *But see Vacco Industries, Inc. v. Van Den Berg*, 5 Cal. App. 4th 34, 48-49 (1992)(suggesting *Bosley* may not have limited exception to substantial shareholders)

- **Non-Compete Agreements: Exceptions**
  - **Trade secrets exception**
    - **The *Edwards* Court expressly declined to rule on whether there existed a trade secrets exception to Section 16600** (*Edwards*, 44 Cal.4th at 946 n.4 ("We do not here address the applicability of the so-called trade secret exception to section 16600, as Edwards does not dispute that portion of his agreement or contend that the provision of the noncompetition agreement prohibiting him from recruiting"))
    - **Post-*Edwards***
      - **Some courts have expressed doubt or found that Section 16600 does not have a trade secrets exception** (*Dowell v. Biosense Webster, Inc.*, 179 Cal. App. 4th 564, 577-78 (2009)("Although we doubt the continued viability of the common law trade secret exception to covenants not to compete, we need not resolve the issue here); *The Retirement Group v. Galante*, 176 Cal. App. 4th 1226, 1238 (2009))
      - **Others have found such an exception exists** (*Edwards. Bank of Am., N.A. v. Lee*, 2008 U.S. Dist. LEXIS 110410 * 17 (CD Cal. 2008)("The Court concludes that 'trade secret exception' to § 16600 still applies. Nothing in Edwards is to the contrary."); *Wanke, Industrial, Commercial, Residential, Inc. v. Keck*, 209 Cal. App. 4th 1151, 1177 (2012))

- **Non-Compete Agreements: Exceptions**
  - **Trade secrets exception**
    - **Note that regardless of whether there exists a trade secret exception to Section 16600, courts will find lawful agreements protecting trade secrets if properly limited and tailored to achieve that goal even if those agreements limit an individual's ability to engage in his/her profession**
      - **But note also that California does not recognize the "inevitable disclosure rule"** (*Whyte v. Schlage Lock Co.*, 101 Cal. App. 4th 1443, 1462-63 (2002)("The inevitable disclosure doctrine permits an employer to enjoin the former employee without proof of the employee's actual or threatened use of trade secrets based upon an inference (based in turn upon circumstantial evidence) that the employee inevitably will use his or her knowledge of those trade secrets in the new employment. The result is not merely an injunction against the use of trade secrets, but an injunction restricting employment. * * * Lest there be any doubt about our holding, our rejection of the inevitable disclosure doctrine is complete.”))
      - **A confidentiality agreement that goes too far on its face in seeking to protect trade secrets or an attempt by a company to use such an agreement to prevent competitive employment may conflict with California's law regarding inevitable disclosure**

- **Non-Compete Agreements: Exceptions**
  - **Even if not barred by Section 16600, enforceability of a non-compete depends on reasonableness**
  - **Courts will not enforce a non-compete agreement unless reasonable as to the type of activity limited and as to the temporal and geographic scope** (*E.g.*, *Nutri-Metics Int'l, Inc. v. Carrington Laboratories, Inc.*, 1992 U.S. App. LEXIS 34226 (9th Cir. 1992)("In order to protect a buyer from unfair competition and ensure he receives the full value of his purchase, the purchaser of a business may negotiate and enforce a covenant not to compete with the seller that is reasonable and necessary in terms of time, activity, and territory."))

- **Non-Compete Agreements: Exceptions**
  - **Geographic Scope**
    - **Section 16601 allows seller to "agree with the buyer to refrain from carrying on a similar business within a specified geographic area in which the business so sold, or that of the business entity, division, or subsidiary has been carried on, so long as the buyer, or any person deriving title to the goodwill or ownership interest from the buyer, carries on a like business therein"** (Cal. Bus. & Prof. Code §16601; *e.g.*, *Alliant Ins. Services, Inc. v. Gaddy*, 159 Cal. App. 4th 1292, 1301 (2008)("The geographic scope of a noncompetition covenant must be limited to the area where the sold company carried on business because [o]therwise, a seller could be barred from engaging in its business in places where it poses little threat of undercutting the company it sold to the buyer." (internal quotations and citation omitted))
    - **Internet and globalization have significantly affected this requirement since many companies can reasonably demonstrate that they conduct business worldwide**

- **Non-Compete Agreements: Exceptions**
  - **Temporal Scope**
    - **Reasonableness of duration very fact dependent**
    - **California decisions provide no definite parameters**
      - **As long as buyer of company continues to operate** (*Martinez v. Martinez*, 41 Cal. 2d 704, 706 (1953)("[T]he court properly limited the duration of the covenant by providing that it should continue so long as plaintiff or any person deriving title to the good will from him should carry on a like business in San Diego County, that being the period permitted by sections 16600 and 16601 of the Business and Professions Code." (citation omitted))
      - **20-year restriction on seller of business reasonable** (*Akers v. Rappe*, 30 Cal. App. 290, 293-94 (1916) (contract prohibiting seller of business from engaging in the same business for 20 years enforceable under predecessor statute to Section 16601))
      - **5-year restriction on seller of shares reasonable** (*Vacco Industries, Inc. v. Van Den Berg*, 5 Cal. App. 4th 34, 49 (1992)(non-compete with "substantial shareholder" in connection with sale of his shares imposed restriction "for the lesser of (1) five years from the date of the agreement or (2) so long as [the company] conducts [covered business] within the territory." (internal quotations omitted))

- **Non-Compete Agreements: Additional Risks**
  - **Notwithstanding clear California law, some companies have California employees sign agreements without any intent to enforce**
    - **Perceived benefit of "in terrorem" effect**
    - **But practice has risk**
      - **California Labor Code section 432.5** ("No employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law.")
      - **California Business & Professions Code section 17200** (*Application Group v. Hunter Group*, 61 Cal. App. 4th 881, 907-908 (1998)(Violation of Business & Professions Code section 16600 may also support a claim for unfair competition)

- **Non-Compete Agreements: Additional Risks**
  - **Risks of having employees sign unenforceable non-competes**
    - **Terminating or taking some other adverse action against a person for refusing to sign may give rise to a public policy claim (***D'Sa v. Playhut***,** Inc.**,** 85 Cal. App. 4th 927**,** 929 (2000)(Terminating an employee who refuses to sign an unlawful non-compete violates the fundamental public policy of California and therefore provides the basis for a *Tameny* claim for wrongful discharge); *see also*, *Latona v. Aetna United States Healthcare, Inc.*, 82 F. Supp. 2d 1089, 1093 (CD Cal. 1999)(same as *D'Sa*; rejecting employer's argument regarding ripeness of the issue because it had not yet attempted to enforce the agreement against the plaintiff))

Non-Compete Agreements: Additional Risks

- **Even upon determining a non-compete void under California law, some companies refuse to hire or take adverse action against a person who signed an agreement with a prior employer**
  - **May do so to avoid risk and cost**
  - **May also do so out of respect for others industry or informal/tacit understanding**
- **Practice may give rise to liability** (*Silguero v. Creteguard, Inc.*, 187 Cal. App. 4th 60, 63 (2010)("This case presents the question of whether a terminated employee . . . has a viable [*Tameny*] claim . . . against her subsequent employer when the employee's former employer had contacted the employee's subsequent employer and had informed it that the employee had signed an agreement with the former employer which prohibited the [competitive employment] and the subsequent employer had terminated the employee's employment out of 'respect and understanding with colleagues in the same industry,' notwithstanding its belief that 'non-compete clauses are not legally enforceable here in California.' Because of Business and Professions Code section 16600's legislative declaration of California's 'settled legislative policy in favor of open competition and employee mobility' (*Edwards v. Arthur Andersen LLP* (2008) 44 Cal.4th 937, 946 . . .), we conclude that the employee has a viable *Tameny* claim.")).

- **Section 16600: Agreements indirectly affecting employee mobility**
  - **Although they may indirectly affect employee mobility, agreements under which a person must repay certain costs or bonuses paid by a company upon termination of employment generally do not violate Section 16600** (*USS-Posco Industries v. Case*, 244 Cal. App. 4th 197 (2016)(Agreement obligating employee to reimburse employer for costs paid by employer for voluntary and optional training program if employee quit within 30 months of completing the program did not violate Section 16600))
  - **But agreements that effectively require repayment of earned compensation will likely violate Section 16600** (*See*, *Edwards v. Arthur Andersen LLP*, 44 Cal. 4th 937, 946 (2008)(discussing with approval *Muggill v. Reuben H. Donnelley Corp.*, 62 Cal.2d 239 (1965), a decision in which the court of appeal invalidated an agreement obligating that required a former employee to forfeit his pension rights if he worked for a competitor because the agreement violated Section 16600))

- **Avoiding California Law: Choice of law & forum selection provisions**
  - **To get around Section 16600, some companies included choice of law provisions making law of another state govern, but California courts would often refuse to enforce these provisions given the conflict and California's strong interest**
  - **"Rush to the courthouse" litigation: employee rushes into California court seeking declaratory judgment finding agreement unenforceable, while company rushes to court in designated state**
  - **To prevent the courthouse rush, some companies used forum selection clauses in court of designated state**
  - **A number of courts enforced these provisions even where it effectively made California employee subject to non-compete** (*see, e.g.*, *Meras Eng'g, Inc. v. CH2O, Inc.*, 2013 U.S. Dist. LEXIS 5426 *42-43 (N.D. Cal. 2013) *Hartstein v. Rembrandt IP Solutions, LLC*, 2012 U.S. Dist. LEXIS 105984 *14-16 (N.D. Cal. 2012); *Besag v. Custom Decorators, Inc.*, 2009 U.S. Dist. LEXIS 13582 *10-12 (N.D. Cal. 2009)("a party challenging enforcement of a forum selection clause may not base its challenge on choice of law analysis"))
    - *But see, Ascension Ins. Holdings, LLC v. Underwood*, 2015 Del. Ch. LEXIS 19 (2015)(Delaware court found unenforceable a non-compete clause in an employee investment agreement that included a Delaware choice of law provision because California law would otherwise have applied and enforcement of the non-compete provisions violated a fundamental policy of California and California had a greater interest)

- **Avoiding California Law: Choice of Law & Forum Selection Provisions**
  - **California passed Labor Code section 925 to address this tactic**
    - **Statute prohibits employer from requiring employee who primarily resides and works in California agree to provision that would (1) require employee to adjudicate outside of California a claim arising in California, or (2) deprive employee of substantive protection of California law for controversy arising in California"** (Cal. Lab. Code § 925(a))
    - **Statute allows employee to void any contract provision that violates above requirements** (Cal. Lab. Code § 925(b))
    - **Statute excludes any contract "with an employee who is in fact individually represented by legal counsel in negotiating the terms of an agreement to designate either the venue or forum in which a controversy arising from the employment contract may be adjudicated or the choice of law to be applied"** (Cal. Lab. Code § 925(e))
    - **Statute applies to any "contract entered into, modified, or extended on or after January 1, 2017"** (Cal. Lab. Code § 925(f))
      - May need to look beyond the date on which employee signed as Section 925 may cover some agreements signed before 2017

- **Non-solicit Agreements**
  - **Many companies require employees to sign agreements that restrict the right to solicit clients or co-workers after the person leaves the company**
  - **Not every communication with clients or former colleagues will qualify as a solicitation** (*Aetna Bldg. Maintenance Co. v. West*, 39 Cal. 2d 198, 203-04 (1952)("Solicit is defined as: To ask for with earnestness, to make petition to, to endeavor to obtain, to awake or excite to action, to appeal to, or to invite. It implies personal petition and importunity addressed to a particular individual to do some particular thing. . . . Merely informing customers of one's former employer of a change of employment, without more, is not solicitation. Neither does the willingness to discuss business upon invitation of another party constitute solicitation on the part of the invitee. Equity will not enjoin a former employee from receiving business from the customers of his former employer, even though the circumstances be such that he should be prohibited from soliciting such business." (internal quotations and citations omitted); *see also*, *Hilb, Rogal & Hamilton Ins. Services v. Robb*, 33 Cal. App. 4th 1812, 1821 (1995)(citing *Aetna Bldg. Maintenance Co.*))

- **Non-solicit Agreements: Customer/Client**
  - **California law generally bars agreements that prohibit a person from soliciting customers/clients given the impact it has on engaging in one's profession** (*Edwards v. Arthur Andersen, LLP*, 44 Cal.4th 937, 948 (2008)(finding that an agreement not to solicit a firm's clients violated Section 16600)
    - **A solicitation made through improper use of trade secrets might still support a claim** (*Bank of Am., N.A. v. Lee*, 2008 U.S. Dist. LEXIS 110410 * 16-17 (CD Cal. 2008)(finding that solicitation using trade secret customer list supports a claim because the "'trade secret exception' to § 16600 still applies."))
      - **But merely providing notice of new employment to customers – even if directed to customers on a trade secret customer list – may not** *Reeves v. Hanlon*, 33 Cal. 4th 1140, 1155-56 (2004)("Under defendants' authorities, although an individual may violate the UTSA by using a former employer's confidential client list to solicit clients, the UTSA does not forbid an individual from announcing a change of employment, even to clients on a protected trade secret client list. * * * As one decision explains, merely announcing a new business affiliation, without more, is not prohibited by the UTSA definition of misappropriation because such conduct is 'basic to an individual's right to engage in fair competition.'" (internal citations omitted))

- **Non-solicit Agreements: Employee**
  - **California law does not prohibit agreements not to solicit a company's employees** (*Loral Corp. v. Moyes*, 174 Cal. App. 3d 268, 278-79 (1985)(agreement not to raid a company's employees did not violate Section 16600); *Sonic Auto., Inc. v. Mohammed Younis*, 2015 U.S. Dist. LEXIS 190427 *4 (CD CA 2015)("[Although Section 16600 prohibits non-compete agreements], a contract may prohibit employees, upon termination of their employment, from soliciting other employees to join them at their new employment. *See Loral Corp. v. Moyes*, 174 Cal. App. 3d 268, 280, 219 Cal. Rptr. 836 (1985); *see also Thomas Weisel Partners LLC v. BNP Paribas*, No. C 07-6198 MHP, 2010 U.S. Dist. LEXIS 11626, 2010 WL 546497, at *6 (N.D. Cal. Feb 10, 2010) (concluding that a no-hire/no-solicitation clause was unenforceable only to the extent that it restricted hiring); *cf. Loral Corp.*, 174 Cal. App. 3d at 279-280 ('Equity will not enjoin a former employee from receiving and considering applications from employees of his former employer, even though the circumstances be such that he should be enjoined from soliciting their applications.' (emphasis added)).")

- **Non-solicit Agreements: Employee**
  - **California law does, however, prohibit agreements not to *hire* employees** (*VL Systems, Inc. v. Unisen*, Inc., 152 Cal. App. 4th 708, 713 (2007)(holding that a no-hire provision violated California law);"Thus, the question becomes whether two parties can agree on a no-hire provision as a matter of contract. Freedom of contract is an important principle, and courts should not blithely apply public policy reasons to void contract provisions. . . . This type of contractual provision, however, may seriously impact the rights of a broad range of third parties." (citation omitted); *Loral Corp. v. Moyes*, 174 Cal. App. 3d 268, 279-80 (1985)("Equity will not enjoin a former employee from receiving and considering applications from employees of his former employer, even though the circumstances be such that he should be enjoined from soliciting their applications.")))
  - **Note that employee non-solicit agreements may have little practical value and a plaintiff may have a difficult time prevailing on a claim for breach**

- **Confidential & Proprietary Information Agreements**
  - **An increasing number of companies require employees to sign agreements covering the person's use of confidential & proprietary information**
  - **Agreements typically include both the period of employment and the post-termination period**
  - **Agreements cover trade secret information but typically seek to cover a much broader range of information**
  - **Although difficult to clearly define what a confidentiality agreement may and may not include, practitioners should note the following in drafting or reviewing confidentiality agreements and in litigating claims relating to such agreements:**
    - **There exists some basis for arguing that the law does not protect supposedly confidential or proprietary information that does not qualify as trade secret** (*Mattel, Inc. v. MGA Entm't, Inc.*, 782 F. Supp. 2d 911, 996-97 (CD Cal. 2010)("[A] claim for conversion requires the existence of a property right, and "information is not property unless some law makes it so. . . . Mattel cannot identif[y] any property right in its confidential information outside of trade secrets law, because no such property right exists under California law." (internal quotations and citation omitted))

- **Confidential & Proprietary Information Agreements**
  - **Contract principles apply, so vagueness of terms can create problems**
  - **Labeling information as "confidential" important but not determinative**
    - **Failure to label or identify information as confidential may weaken company's position, but focus goes beyond the label** (*Thompson v. Impaxx, Inc.*, 113 Cal. App. 4th 1425, 1430 (2003)("The recitals [of confidentiality in an agreement] alone do not establish anything. Labeling information as a trade secret or as confidential information does not conclusively establish that the information fits this description.")
  - **The manner in which a company actually uses and maintains information most relevant**
    - **A company must show that it took "reasonable" steps to protect the information** (*Whyte v. Schlage Lock Co.*, 101 Cal. App. 4th 1443, 1454 (2002)("Reasonable efforts to maintain secrecy have been held to include advising employees of the existence of a trade secret, limiting access to a trade secret on [a] 'need to know basis,' and controlling plant access," and having employees sign confidentiality agreements))

- **Confidential & Proprietary Information Agreements**
  - **Information lawfully available from other sources generally will not qualify as confidential** (*see, e.g.*, *Nat'l City Bank, N.A. v. Prime Lending, Inc.*, 737 F. Supp. 2d 1257, 1266-67 (ED Wa. 2010)(finding certain customer information not protectable as a trade secret; "To the extent that this claim is based on Plaintiffs' allegation that Defendants misappropriated their customer list, the claim is unlikely to succeed. That list was not a trade secret because it was readily ascertainable by proper means. . . . Customer names, addresses, loan dates, and loan values are available from a title search for only $12.00. State law encourages mortgage lenders to file this information in order to protect their security interests. Thus, Defendants had access to Plaintiffs' entire customer list for a modest fee, and it was public information. Plaintiffs claim that it would have been very expensive and time-consuming to compile all the customer information that Defendants took from them. That might be, but publicly available information does not become a trade secret even if it is expensive to acquire." (citations omitted))

- **Confidential & Proprietary Information Agreements**
  - **An employee's general knowledge, skill, and experience does not constitute confidential information that a company can protect or for which it can restrict an individual's use following termination of employment even if gained while working for company** (*see, Morlife, Inc. v. Perry*, 56 Cal. App. 4th 1514, 1519 (1997)("While it has been legally recognized that a former employee may use general knowledge, skill, and experience acquired in his or her former employment in competition with a former employer, the former employee may not use confidential information or trade secrets in doing so."))
    - **This may apply to information about co-workers** (*American Mortgage Network v. Loancity.com*, 2006 Cal. App. Unpub. LEXIS 10141 *25-27 (2006)("The information an employee acquires about coworkers, such as working habits, personal characteristics, and salary information, is not typically obtained through communications from the employer that are stated to be confidential; rather, it is typically gained over time as a result of working and communicating with other employees. * * * [A]n employee's knowledge that another employee holds a particular position, is a top performer in that position, and earns a certain range of salary would not [qualify as confidential information].""))

- **Confidential & Proprietary Information Agreements**
  - **Laws may limit a company's right to restrict use, dissemination or disclosure of certain information**
    - **Compensation information**
      - **California law prohibits employer from requiring employee to "refrain from disclosing the amount of his or her wages," requiring "an employee to sign a waiver or other document that purports to deny the employee the right to disclose the amount of his or her wages, or "[d]ischarging, formally discipline[ing], or otherwise discriminat[ing] against an employee who discloses the amount of his or her wages."** (Cal. Lab. Code § 232)
        - **Although Labor Code section 232 applies only to employee's own disclosure, inability to prevent disclosure seemingly makes it more difficult for employer to demonstrate confidentiality of information** (*but see, Bancroft-Whitney Co. v. Glen*, 64 Cal. 2d 327, 351-52 (1966)("The salaries paid by a corporation to its employees are not matters of common knowledge and, even among corporation employees, they are divulged only to those persons or organizations directly concerned with personnel matters or to responsible fiduciaries. Defendants argue that the salary information is not confidential because the employees could have revealed their own salaries to Bender Co. or anyone else. It requires little talent to distinguish between a situation in which an individual voluntarily discloses his own salary to another and one in which the unpublished salary list of a group of prospective employees is revealed to a competitor for the purpose of facilitating the recruitment of the corporation's personnel."))

- **Confidential & Proprietary Information Agreements**
  - **Section 7 of the National Labor Relations Act (NLRA)**
    - **Limits employer's right to restrict disclosure of information about compensation or working conditions** (*see, Grant-Burton v. Covenant Care, Inc.*, 99 Cal. App. 4th 1361, 1377 (2002)("[A] rule which prohibits employees from discussing wages among themselves . . . violates the [NLRA]." (internal quotations and citation omitted))
      - *See also, Cintas Corp. v. NLRB, 482 F.3d 463 (DC Cir. 2007)*
        - Company handbook included following policy: "*We honor confidentiality. We recognize and protect the confidentiality of any information concerning the company, its business plans, its partners, new business efforts, customers, accounting and financial matters.*" On review of ALJ decision, "the NLRB unanimously affirmed the ALJ's decision, concluding that the language in the Cintas employee handbook created an unqualified prohibition of the release of any information regarding its partners[,] [which] could reasonably [sic] construed by employees to restrict discussion of wages and other terms and conditions of employment with their fellow employees and with the Union." (*Cintas Corp.*, 482 F.3d at 465-66.)

- **Confidential & Proprietary Information Agreements**
  - **Section 7 of the National Labor Relations Act (NLRA)**
    - **Protects *non-supervisory* employees covered by the Act even in non-union workplaces**
    - **Although Section 7 may have little applicability after person's employment ends, many agreements do not distinguish and may run afoul of the NLRA's concern with agreements that deter**
  - **Defend Trade Secrets Act**
    - **While company can generally seek to protect its trade secrets, the federal Defend Trade Secrets Act (DTSA) imposes limits** (18 U.S.C. § 1833)
    - **DTSA provides immunity from criminal or civil liability under any Federal or State law for disclosing a trade secret in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney if made either solely for the purpose of reporting or investigating a suspected violation of law or in a complaint or other document filed in a lawsuit or other proceeding, if filed under seal** (18 U.S.C § 1833(b)(1))
    - **DTSA requires that employers provide notice of the immunity "in any contract or agreement with an employee that governs the use of a trade secret or other confidential information"** (18 U.S.C § 1833(b)(3))

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