



## Employment Auditor's Notepad

### PROTECT YOUR EMPLOYEES AND THE COMPANY DURING YOUR HOLIDAY PARTY

Generally, employers are not responsible for their employees' wrongs committed as a result of alcohol consumption at a purely social event. However, if business is involved, or sexual harassment occurs, the company could be on the hook. Protect your employees and the company this Holiday season by:

- Not serving alcohol, or limiting alcohol consumption (two drink maximum or close the bar early);
- Inviting spouses and significant others;
- Communicating to employees that attendance is entirely voluntary;
- Not discussing company business at the event;
- Not inviting clients or customers;
- Providing taxi service to those guests who will be drinking;
- Reminding employees of your sexual harassment policies.

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## Overbroad Noncompete Agreement Held Void

### AGREEMENT PREVENTED EMPLOYEES FROM ENGAGING IN THEIR PROFESSION

In *Dowell v. Biosense Webster, Inc.*, the California Court of Appeals held that Biosense could not enforce a noncompete and nonsolicitation clause in its employment agreement that, as a practical matter, would preclude employees from working in their chosen profession. There are only three statutory exceptions to the general rule that noncompete and nonsolicitation clauses are void: (1) sale of a business and agreement not to compete within a specified geographic area; (2) dissolution of a partnership and similar agreement; and (3) departure of a member of a limited liability company and similar agreement. Apart from these statutory exceptions, a noncompete and nonsolicitation agreement is void at its inception. There is no judicially created exception to protect company trade secrets. Rather, any use of trade secret information must be wrongful independent of any contractual provision to be actionable, i.e. a separate tort.

Here, Biosense defined "Confidential information" in such a broad and inclusive manner that it seemed nearly impossible for an employee to work for a competitor without running afoul of the noncompete and nonsolicitation provisions. The Court rejected Biosense's argument that the Court should interpret the clause in a manner as to make it lawful, refusing to save an otherwise void provision.

While a broad list of company "secrets" may appear to provide an employer with broad protection, it may render the noncompete agreement entirely void.

## Severance Agreements

### NOT ADMISSIBLE TO PROVE LIABILITY UNDER STATE LAW

When Verity, Inc. terminated Mangano, Verity presented Mangano with a severance agreement whereby in exchange for 17 weeks' salary, Mangano would release Verity from claims including discrimination and retaliation. Mangano did not accept the severance agreement and attempted to use the proposed severance agreement as evidence of Verity's liability at trial. The court held that while the agreement may be admissible under federal law or for another purpose, it is not admissible under California law as evidence of liability.

While well-drafted severance agreements remain the best way to avoid employment litigation, employers should be aware severance agreements (especially if poorly drafted or presented at the wrong time) may make their way in front of a jury someday.

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