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Second Court Calls into Question Viability of Employee Non-Solicitation Agreements

By James Goodman & David M. Prager on February 4, 2019

As we've discussed, the California Court of Appeal in ***AMN Healthcare, Inc. v. Aya Healthcare Services, Inc.***, recently ruled that a broadly worded contractual clause that prohibited solicitation of employees for one year after employment was an illegal restraint on trade under California law.

Now, a second court has joined in.

In ***Barker v. Insight Global LLC,*** Case No. 16-cv-07186 (N.D. Cal., Jan. 11, 2019), Judge Freeman, sitting in the Northern District of California, adopted *AMN's* reasoning and reversed a prior order that dismissed claims that asserted a contractual employee non-solicitation provision was unlawful.

In doing so, the Court adopted the primary holding of *AMN* – that contractual prohibitions barring solicitation of employees are invalid under the California Supreme Court's reasoning in *Edwards v. Arthur Andersen LLP* (2008) 44 Cal. 4th 937. The Court also rejected the secondary ruling in *AMN*, which would have arguably limited the holding of *AMN* to its facts.

Barker is the second court in as many months to invalidate an employee non-solicitation provision and employers who regularly include such provisions in their agreements with California employees should reassess their use and enforcement of those provisions.

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