California Employers Have Another Reason to Scrutinize Settlement Agreements

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Jim McDonald was quoted in *SHRM* on May 27, 2015. The article "California Employers Have Another Reason to Scrutinize Settlement Agreements" discussed the 9th U.S. Circuit Court of Appeals ruling in the *Golden v. California Emergency Physicians Medical Group*, in which the 9th Circuit panel held that Section 16600 extends beyond noncompete agreements to also include any contract that constitutes a restraint of a substantial character on an individual's ability to practice a profession.

Jim weighed in on the ruling.

"I don't think this case is a message to employers that they can't have no-rehire clauses in settlement agreements with a plaintiff," said Jim.

In the Golden case, attorneys said the defendant's enormous market share was a huge concern. The clause potentially could prevent the plaintiff from practicing as an emergency room physician in a large part of that geographic area, according to Jim.

The no-rehire provision in the case was "awfully broad," he observed. "That was what got the 9th Circuit's attention."

Until this area of law is clarified, Jim said, companies should avoid clauses that would authorize an employer to fire a plaintiff without recourse, in the case of a plaintiff who is working for a new company that is then bought by the plaintiff's former employer.

Also, until there's clarity, Jim recommended limiting the clause to the employing entity that settled the dispute with the employee.

To read the full article, please visit *SHRM*.

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