

The California Supreme Court on Thursday strengthened a state law that says employers cannot limit employees' right to solicit former clients or work for a competitor after they leave a company through so called non-compete agreements.

"California employers can more freely recruit employees that have signed non-compete agreements without worrying about getting sued," said James Pooley, a partner at Morrison & Foerster LLP about the impact of the ruling. "The law is much clearer."

Businesses that have employees in California and who require these employees to sign non-compete agreements will likely want to review them for their legality, lawyers said. In particular, employees fired for refusing to sign such agreements could more easily make claims in wrongful-termination lawsuits.

In the case originally brought by a former tax manager in the Los Angeles office of Arthur Andersen LLP who refused to sign a non-compete agreement, the company asked the court to adopt a "narrow-restraint" exception under the law. Andersen argued that its agreement wasn't illegal because it didn't broadly prevent this tax manager, Raymond Edwards II, from working in his profession, but only prevented him from soliciting clients from the company.

In making its case, Anderson cited, and the trial court relied on, three Ninth Circuit U.S. Court of Appeals cases that erroneously allowed this exception, according to the California Supreme Court.

"Now the California Supreme Court has said you guys got it wrong," Pooley commented.

The California justices write that the confusion happened after the Ninth Circuit in one case (*Campbell v. Trustees of Leland Stanford Jr. University*) stated wrongly in a paragraph that California courts made the exception, and the federal court picked up on that interpretation in two more cases.

"If the Legislature intended the statute to apply only to restraints that were unreasonable or overbroad, it could have included language to that effect," writes Justice Ming Chin in the unanimous opinion by the five-justice panel.

The case could change litigation strategy for some employer-side lawyers, who choose to bring their cases in federal court because the Ninth Circuit made this exception.

"It takes away any opportunity to forum shop and get into federal court if there is federal court jurisdiction," said Richard Frank, a partner with Cooley Godward Kronish LLP.

The California Supreme Court ruling would not permit employees to compete using the misappropriated trade secrets of a former employer.

Frank commented that the ruling underscores how different California's employment landscape is from other states in the areas of open competition and employee freedom.