

# **BRADLEY & GMELICH**

Lawyers

Barry A. Bradley  
Thomas P. Gmelich  
Lena J. Marderosian  
Jonathan A. Ross  
Gary J. Bradley

700 N. Brand Boulevard, 10<sup>th</sup> Floor  
Glendale, California 91203  
Telephone (818) 243-5200  
Facsimile (818) 243-5266

Northern California Office  
2033 Gateway Place, 5<sup>th</sup> Floor  
San Jose, California 95110  
Telephone (408) 573-6267  
Facsimile (408) 437-1201

[www.bglawyers.com](http://www.bglawyers.com)

Robert A. Crook  
John K. Flock  
Lindy M. Fried  
Mark I. Melo  
Arnold S. Levine  
Shirley R. Sullinger  
Kathryn Canale  
G. Dean Guerrero  
Jaimee K. Wellerstein  
James N. Kahn  
Sumithra Rao  
Steven C. De Vore

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## **EMPLOYMENT CASE NOTE: TRADE SECRET AGREEMENTS**

If you own a business in California, you likely already know that, generally speaking, non-competition clauses are unenforceable in the employment context. However, employers could usually find solace in trade secret and non-solicitation agreements. These agreements are designed to prevent current and former employees from stealing trade secrets and contacting your clients in an attempt to divert business. Unfortunately, in the recent case of *The Retirement Group v. James Galante, et al.* the California Court of Appeals dealt another blow to the business community trying to protect its intangible assets by placing limits on the enforceability of such agreements.

There are two competing concepts under California law regarding protection of businesses trade secrets and client lists. First, California courts refuse to enforce most "noncompetition" agreements. However, California courts have also held that a former employee may be barred from soliciting existing customers to redirect their business away from their former employer to the employee's new business if the employee is utilizing trade secret information to solicit those customers.

In the *Retirement Group* case, the former employer was attempting to enforce an injunction preventing the employee from contacting former clients. The court determined that the issue was not whether the employee was contacting former clients, but rather whether he misused trade secrets in doing so. Accordingly, the courts are indicating that the only circumstances under which it will issue an injunction to stop employees from contacting former clients to solicit their business is when the employee is violating trade secret laws to do so. Note that the term "trade secret" has a very specific definition under California law (a trade secret is

information that derives independent economic value from not being generally known to or discernable by the general public or to persons skilled in the trade). Additionally, employers must take affirmative steps to protect their trade secrets. Not all client lists are considered trade secrets.

As usual, the best offense is a good defense. It is time to review your trade secret and non-solicitation agreements to ensure you can get the maximum protection provided under the law. Contact our business consultants to schedule a review of your current business and employment practices.