

EP&G NEVADA LAW PRIMER

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Robert has particular experience handling partnership disputes. Robert also participates in all aspects of real estate transactions and has experience handling substantial family law matters.

Robert is admitted to practice in Nevada and California and is a graduate of the UCLA School of Law.

NEVADA ALLOWS NON-COMPETE EMPLOYMENT AGREEMENTS

It is a natural instinct for any company to seek to protect their business and discourage poaching activities by competitors by requiring their employees to execute non-compete agreements.

Nonetheless, as most California practitioners are well aware (and likely due to this natural business instinct), subject to limited exceptions, non-compete provisions in employment agreements are illegal in California. California Business and Professions Code § 16600 provides that "every contract by which anyone is restrained from engaging in a lawful profession, trade or business of any kind is to that extent void." Section 16600 invalidates agreements to

preclude employment in a certain line of work.

Unlike California, non-compete provisions in employment agreements are legal in Nevada, but not without much debate in both the courts and legislature.

PRACTICE AREAS

- Business and Commercial Disputes
- Corporate and Securities Law
- Employment Law
- Family Law
- Fiduciary Litigation and Legal Malpractice
- Intellectual Property Matters
- Finance
- Real Estate
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In 2016, the Nevada Supreme Court in *Golden Road Motor Inn, Inc. d/b/a Atlantis Casino Resort v. Islam and MEI-GSR Holdings*, 376 P.3d 151 (Nev. 2016), held



THINKING OUTSIDE THE BOX

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that non-compete provisions that “extend[] beyond what is necessary” to protect the former employer’s interests are unreasonable and unenforceable and eliminated the “blue pencil” doctrine that allowed courts to edit unreasonable non-compete provisions.

In 2017, Nevada passed Assembly Bill 276 (codified as Nev. Rev. Stat. 613.195), setting a new standard by which non-competes are evaluated. A Nevada non-compete provision is void and unenforceable in its entirety unless: (i) it is supported by valuable consideration; (ii) it does not impose a restraint that is greater than is required for the protection of the employer; (iii) it does not impose an undue hardship on the employee; and (iv) it imposes only those restrictions that are

appropriate in light of the valuable consideration given in support of the provision.

Also, in the case of layoffs, the employer may enforce the provision only “during the period in which the employer is paying the employee’s salary, benefits or equivalent compensation, including, without limitation, severance pay.”

Perhaps most critically, A.B. 276 supersedes *Golden Road* and allows courts to “blue pencil” an employment agreement when it finds that a non-compete provision is supported by valuable consideration, but has unreasonable or overbroad restrictions.

The requirement to provide valuable consideration is new under Nevada law. However, the Nevada Legislature did not define what constitutes “valuable consideration.” Due to this and

other ambiguities and undefined terms in A.B. 276, it is important to consult with a Nevada practitioner when drafting non-compete agreements that affect Nevada employees.

ABOUT THE FIRM

Enenstein Pham & Glass is a result-oriented law firm that implements a creative approach to attain its clients’ objectives. Thinking outside the box brings results to otherwise difficult or hopeless situations. Whether at trial or in the boardroom, the Firm employs a multidisciplinary approach to complex situations to provide an effective resolution.

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