

08 | 5 | 2010 Posted By

California Court of Appeal Extends Wrongful Termination Cause of Action

A California Court of Appeal has recently held that a subsequent employer can be liable for wrongful termination in violation of public policy for firing a new employee when her prior employer attempted to enforce an unenforceable non-compete agreement.

The case, *Silguero v. Creteguard, Inc.*, Case No. B215179, represents an expansion of an employee's right to sue for wrongful termination in violation of public policy. In this case, a sales employee signed a non-compete agreement with her previous employer which purportedly prohibited her from working for a competitor for 18 months post-termination. The employee ultimately was fired, and a few months later, found employment with Creteguard, Inc., a competitor of her former employer. After her hire, her previous employer contacted Creteguard and informed it of the employee's agreement not to compete for a period of 18 months. Creteguard then terminated the employee, stating "it has been brought to my attention... that you have signed a confidentiality/non-compete agreement with your past employer[.] [W]e regret to inform you that [Creteguard] is unable to continue your employment effective today... [A]lthough we believe that non-compete clauses are not legally enforceable here in California, [Creteguard] would like to keep the same respect and understanding with colleagues in the same industry."

The employee sued Creteguard, alleging wrongful termination in violation of public policy because Creteguard terminated her due to her non-compete agreement with her previous employer. Creteguard argued that "there was no clearly-delineated public policy prohibiting a subsequent employer from honoring a putatively valid non-compete/confidentiality agreement entered into by an employee and a former employer," and that any restraint in trade was committed by the prior employer, not it.

The Court rejected Creteguard's arguments, holding that the employee could pursue her claim against Creteguard. The cause of action for wrongful termination in violation of public policy contemplates a strong public policy that is tethered to a constitutional or statutory right benefitting the public at large. The Court stated that the provision of California law which prohibits non-compete agreements "provides such a legislative declaration of a fundamental public policy" that Creteguard's termination of the employee constituted a wrongful termination in violation of that policy.

The Court also took the opportunity to reaffirm California's strong stance against non-compete agreements. The Court reiterated that the law "evinces a settled legislative policy in favor of open competition and employee mobility... The law protects Californians and ensures that every citizen shall retain the right to pursue any lawful employment and enterprise of their choice."

Despite Creteguard's argument that the public policy against non-compete agreements does not apply to those with whom the employee goes to compete, the Court nevertheless held that Creteguard's asserted "understanding" with the employee's prior employer that it would honor the non-compete agreement "is tantamount to a no-hire agreement."

Silguero reminds employers that it does not matter whether they are the company entering in to the non-compete agreement with an employee, or the subsequent employer subsequently enforcing that non-compete agreement. If an adverse employment action is taken against an employee based upon a non-compete or no-hire agreement prohibited by California law, both the prior and now the current employer may be liable for wrongful termination claims.