

New California Non-Compete Legislation

As most California employers know, California has long espoused a public policy in favor of employee mobility. California’s Business and Professions Code section 16600 provides that “every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is void.” For decades, California courts have relied on this statute to prohibit, with few exceptions, non-compete agreements with employees in California.

California is now taking this prohibition a step further. Recently, the California legislature passed two new laws, effective January 1, 2024, which extend California’s prohibition on non-compete agreements even to agreements between employers and employees in other states. These laws also impose new, mandatory notification requirements on businesses that utilize non-competes, and provide that violations would constitute acts of unfair competition. Any company that includes non-competition provisions in its employment agreements should be aware of these developments—particularly if the company does business in California.

I. SB 699

Signed into law on September 1, 2023, Senate Bill 699 adds Section 16600.5 to the Business & Professions Code. Section 16600.5 has two main components.

First, the new law extends the reach of California’s prohibition against non-compete agreements by specifying that any contract that is void under Section 16600 “is unenforceable regardless of where and when the contract was signed.” Section 16600.5 adds that an employer may not “enter into a contract with an employee or prospective employee that is void” under Section 16600, and bars “an employer or former employer from attempting to enforce a contract that is void regardless of whether the contract was signed and the employment was maintained outside of California.” The legislature’s underlying findings state that “California’s public policy against restraint of trade law trumps other state laws when an employee seeks employment in California, even if the employee had signed the contractual restraint while living outside of California and working for a non-California employer.”

Second, the new law creates a private right of action for employees, former employees, and prospective employees to seek injunctive relief, actual damages, or both if an employer either (a) enters into a contract that is void under Section 16600 or 16600.5 or (b) attempts to enforce such a contract. The law authorizes fee-shifting in favor of a prevailing plaintiff.

II. AB 1076

Signed into law on October 13, 2023, Assembly Bill 1076 codifies prior California law by expressly providing that Section 16600 should be “read broadly” to “void the application in any noncompete agreement in the employment context[.]” The amendments also confirm that Section 16600 is not “limited to contracts where the person being restrained from engaging in a lawful profession, trade, or business is a party to the contract.”

In addition, AB 1076 adds Section 16600.1 to the Business & Professions Code, which has several components:

- (1) Section 16600.1 specifies that it is “unlawful” to include a noncompete clause in an employment contract or to require an employee to enter a noncompete agreement as a condition of employment.
- (2) Section 16600.1 imposes an affirmative notice obligation on employers who have utilized non-compete agreements. By February 14, 2024, all such employers must notify any current or former employees (employed after January 1, 2022) that the noncompete provisions in their agreements are void. An individualized communication to the employee or former employee is required.
- (3) Section 16600.1 adds that any violation of these requirements “constitutes an act of unfair competition” within the meaning of California’s Unfair Competition Law, codified at Business & Professions Code 17200 *et seq.* Section 17200 allows for enforcement either by private parties or state regulators.

These new laws raise significant issues of scope and extraterritoriality. It remains to be seen how broadly these new laws will apply in practice, and whether jurisdictional challenges may limit their effect.

If you have any questions about the issues addressed in this memorandum, or if you would like a copy of any of the materials referenced in it, please do not hesitate to contact us:

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