

Employment & Labor Law Alert

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California Strengthens Its Prohibitions on Noncompetes With the Enactment of Two New Laws

Senate Bill 699 and Assembly Bill 1076, signed into law by Gov. Gavin Newsom, further strengthen the current protections under Section 16600 of the Business and Professions Code. More specifically, they expand the ways employees can challenge noncompetes and require employers to provide noncompete notices to their employees. With few exceptions, Section 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.”

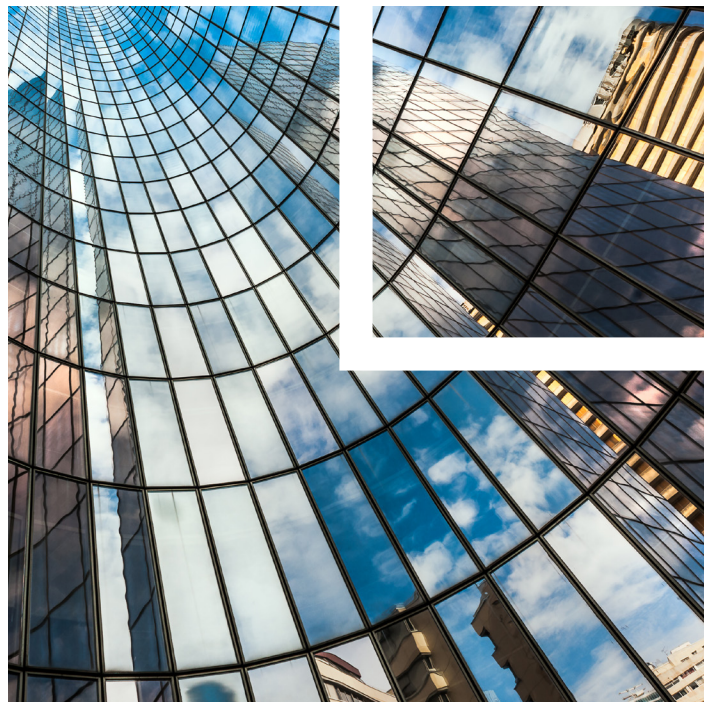
These new laws take effect on Jan. 1, 2024.

Senate Bill 699

Senate Bill 699 provides that an employer may not attempt to enforce or enter into a contract that is void under state law regardless of where and when the contract was signed.

According to the California Legislature:

- California courts have been clear 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 California and working for a non-California employer.
- California has a strong interest in protecting the freedom of movement of persons whom California-based employers wish to employ to provide services in California, regardless of the persons’ state of residence.



Senate Bill 699 adds the following provisions:

- (a) Any contract that is void and is unenforceable regardless of where and when the contract was signed.
- (b) An employer or former employer shall not attempt to enforce a contract that is void regardless of whether the contract was signed and the employment was maintained outside of California.
- (c) An employer shall not enter into a contract with an employee or prospective employee that includes a provision that is void.
- (d) An employer that enters into a contract that is void or attempts to enforce a contract that is void commits a civil violation.
- (e) An employee, former employee or prospective employee may bring a private action for injunctive relief or the recovery of actual damages, or both. In addition, a prevailing employee, former employee or prospective employee in an action shall be entitled to recover reasonable attorney’s fees and costs.

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Assembly Bill 1076

Assembly Bill 1076 further solidifies California’s prohibitions on noncompetes by making it unlawful for employers to include noncompete clauses in employment contracts or to require employees to enter a noncompete agreement. It also obligates employers to notify current and former employees in writing that the noncompete clause or agreement they previously signed is void.

Assembly Bill 1076 adds the following provisions:

(a) It is unlawful to include a noncompete clause in an employment contract, or to require an employee to enter a noncompete agreement, that does not satisfy an exception.

(b) For current employees, and former employees who were employed after Jan. 1, 2022, whose contracts include a noncompete clause, or who were required to enter a noncompete agreement, that does not satisfy an exception, the employer shall:

(1) Notify the employee by Feb. 14, 2024, that the noncompete clause or noncompete agreement is void.

(2) The notice should be in the form of a written individualized communication to the employee or former employee, and should be delivered to the last known address and the email address of the employee or former employee.

(c) A violation of this section constitutes an act of unfair competition.

Action Items for California \ Employers

- Review current template employment-related agreements, offer agreements and other restrictive covenant documents to confirm they meet the new requirements for noncompetes. If changes are needed, make modifications by Jan. 1, 2024.
- Review employment-related agreements, offer agreements and other restrictive covenant documents signed on or after Jan. 1, 2022. If they contain noncompliant noncompetes, prepare written notifications stating that the agreement or clause the employee signed is void and deliver them to any current or former employees by Feb. 14, 2024.
- Explore ways, other than noncompetes, to ensure you are able to protect and limit the exposure of your confidential and trade secret information.

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