



ALERTS

New Restrictions On Non-Compete Agreements – And Burdens On Employers – In California

December 11, 2023

Highlights

New California laws further restrict non-compete agreements

Employers can face civil penalties for attempting to enforce a non-compete agreement

Employers must provide written notice to any employee who has entered into an otherwise illegal non-compete agreement since Jan. 1, 2022, informing the employee that the non-compete agreement is void

It is well-known in the business community that non-compete agreements are largely unenforceable in California unless specific, narrowly tailored exceptions apply. Section 16600 of the California Business and Professions Code broadly prohibits “every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind.” In short, if a contract or agreement seeks to restrain, through a non-compete provision, a former employee from engaging in a lawful profession, that provision will be void under California law.

Under two new laws that will be effective starting Jan. 1, 2024, California added even more restrictions to an employer’s ability to enter into and

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enforce non-compete agreements. Senate Bill 699 and Assembly Bill 1076 provide that non-compete agreements are no longer merely void under California law – attempting to enforce them will be a civil violation. If there is a violation, a current, former or prospective employee may seek injunctive relief, recover actual damages, or both. A prevailing employee will also be able to recover reasonable attorneys' fees and costs.

SB 699 applies to contracts “regardless of where and when the contract was signed” and “whether the contract was signed and the employment was maintained outside of California.” Accordingly, the new statute prohibits an out-of-state employer's ability to enforce a non-compete agreement if a former employee moves to California, even if the former employee signed an otherwise enforceable non-compete while working in a different state.

Finally, and importantly, AB 1076 also creates a new and extremely burdensome notice requirement for employers. Employers must now affirmatively notify an employee who previously entered into an otherwise illegal non-compete agreement that the agreement is void via a written, individualized communication to the employee.

Employers must provide this notice by Feb. 14, 2024, to any current or former employees who were employed after Jan. 1, 2022. Accordingly, employers should consider closely reviewing all existing agreements that contain non-compete provisions and determine if such notices are required under the new law.

For more information, please contact the Barnes & Thornburg attorney with whom you work or John Kuenstler at 312-338-5924 or johnkuenstler@btlaw.com, or Michael Witczak at 310-284-3764 or michael.witczak@btlaw.com.

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