

# Now & Next

## Labor & Employment Alert

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### **California strengthens its ban on non-compete agreements**

By Jonathan Assia and David M. Prager

Governor Gavin Newsom recently signed Senate Bill 699 and Assembly Bill 1076. SB 699 makes any non-compete agreement—regardless of where it was signed—unenforceable in California.



#### **What's the impact?**

- Non-compete agreements are unenforceable in California except under very narrow circumstances.
- Non-compete agreements signed in other states are unenforceable in California.
- This new law goes into effect January 1, 2024.

California has had a long-standing public policy prohibiting non-compete agreements. That public policy is codified in Business and Professions Code section 16600, which prohibits agreements that “restrict anyone from engaging in a lawful profession, trade, or business of any kind,” except under limited statutory exceptions.

## **Are there exceptions to non-competes being unenforceable in California?**

The law has a few exceptions related to business sales or closures for companies, partnerships, and LLCs. These exceptions probably don't apply to most agreements that prevent employees (who don't own part of the company) from competing with their employers.

### **Senate Bill 699**

[SB 699](#) expands on California's non-compete ban by providing that any contract voided under Section 16600 "is unenforceable regardless of where and when the contract was signed." It further prohibits employers or former employers from attempting to enforce a contract "regardless of where the contract was signed" and even if "the employment was maintained outside of California."

In addition, it provides employees subject to void non-compete agreements with a cause of action to seek injunctive relief or recovery of damages, including attorney's fees.

### **Assembly Bill 1076**

AB 1076 makes it unlawful to include a non-compete clause in an employment contract, or to require an employee to enter a non-compete agreement, that does not satisfy limited statutory exceptions.

It further requires that employers must notify their employees who were employed after January 1, 2022, that their non-compete agreements (or non-compete clauses contained in other agreements) are unenforceable. The notice must be in the form of a "written individualized communication" sent to the employee's last known address and email address. The notice must be provided no later than February 14, 2024. Failure to provide the required notification constitutes an act of unfair competition under California's Unfair Competition Law.

AB 1076 also contains a declaration of existing law by specifying that Business and Professions Code section 16600—the statutory provision voiding non-compete contracts—is to be broadly construed to void application non-compete agreements in the employment context that do not meet certain exceptions.

## **Practical impact & looking ahead**

The inclusion of a private right of action and a one-way fee-shifting provision, along with AB 1076's notification requirement, increases the risk that employers—even out-of-state employers—will face litigation over non-compete agreements. It may also raise the risk of litigation for

employers utilizing non-solicitation agreements and broadly worded confidentiality agreements, both of which have been questioned by California state and federal courts in recent years.

AB 1076's notification requirement could also prove burdensome to employers. Employers should act now to review employment agreements with current and former employees to assess whether non-compete clauses of any kind are included and whether notice to those employees is required.

Against the backdrop of a growing national trend against non-compete agreements—the New York Legislature passed a bill banning most non-compete agreements in June 2023—employers both inside California and elsewhere should closely review their existing agreements (and agreements with former employees who were employed after January 1, 2022), their reasons for utilizing them with particular employees, and their reasons for attempting to enforce them.

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