

California Strengthens Restrictions on Noncompete Clauses

Labor & Employment Workforce Watch

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California expanded its already broad restrictions on noncompete clauses by enacting Senate Bill No. 699 (“[SB 699](#)”), which takes effect on January 1, 2024. The new statute, Business and Professions Code section 16600.5, expands the scope of existing law to apply to non-competes which impact a person or entity in California at the time of enforcement, even if there was no connection to California when entered, and it also provides new enforcement mechanisms. These mechanisms include authorizing a private right of action allowing a current, former, or prospective employee to sue an employer, or a former employer, for an order finding a noncompete clause unenforceable, and allowing that employee to recover damages and attorney’s fees.

Existing law

Under existing California law, contractual provisions by which a person is restrained from engaging in a lawful profession, trade, or business of any kind—commonly referred to as noncompete clauses—are void, except under specific circumstances. As explained by the California Supreme Court, “[u]nder the statute’s plain meaning, ... an employer cannot by contract restrain a former employee from engaging in his or her profession, trade, or business unless the agreement falls within one of the exceptions to the rule.” Narrow statutory exceptions to the ban on noncompete clauses include those related to the sale of a business, the dissolution of a partnership, or the dissolution or termination of interests in a limited liability company.

SB 699

Despite the existing prohibition on noncompete clauses, the California Legislature found that “California employers continue to have their employees sign noncompete clauses that are clearly void and unenforceable under California law.” The Legislature strengthened California’s ban on noncompete clauses because the California Legislature believes that “[e]mployers who pursue frivolous noncompete litigation has a chilling effect on employee mobility.” To eliminate this, the Legislature is now banning enforcement of out-of-state noncompete clauses that apply to California residents because “as the market for talent has become national and remote work has grown, California employers increasingly face the challenge of employers outside of California attempting to prevent the hiring of former employees.”

SB 699 makes two significant changes to existing law to strengthen California’s ban on noncompete clauses. First, SB 699 clarifies that any void noncompete clause “is unenforceable regardless of where and when the contract was signed.” The law also bars employers or former employers from attempting to enforce a void noncompete clause against a California resident “regardless of whether the contract was signed and the

employment was maintained outside of California.” These provisions bar former employers from enforcing noncompete clauses in California, even if the noncompete clause was unrelated to California at the time it was signed, such as when the employer, the employee, and the place of prior employment were all outside California.

Second, SB 699 provides California residents additional means to enforce the ban on noncompete clauses. Under the law, an employee, former employee, or prospective employee may sue an employer to enforce the law, and the employee may receive “injunctive relief or the recovery of actual damages, or both.” Additionally, an employee, former employee, or prospective employee who prevails in a lawsuit under this law is entitled to recover attorney’s fees and costs. By authorizing damages, attorney’s fees and costs for a prevailing employee (but not for a prevailing employer), the California Legislature is attempting to deter employers from continuing to use void noncompete clauses against California residents.

Employers who use noncompete clauses in California, or employers who seek to enforce noncompete clauses against California residents regardless of where the employee entered into the agreement, should be aware of this new law and use caution before taking any action.

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