

Recent Changes to California's Anti Non-Competition Laws Take Effect

Labor & Employment Workforce Watch

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As we previously [noted](#), California recently expanded its restrictions on non-competes under California Senate Bill No. 699 by rendering void and unenforceable all restrictive covenants that would be void under California law “whether the contract was signed, and the employment was maintained outside of California,” and further providing California resident employees additional remedies to challenge unenforceable non-competes.

In addition, on January 1, 2024, [California Assembly Bill AB 1076](#) became effective, further underscoring the state's disfavor for non-compete agreements and imposing additional requirements and penalties for employers regarding non-competition agreements with employees located in California.

AB 1076, which adds Section 16600.01 to the Business and Professions Code, further strengthens the prohibition on non-competition agreements by requiring that employers provide individualized written notices to covered employees whose contracts include a void or unenforceable non-compete clause or who, subsequent to the effective date of AB 1076, enter an unenforceable non-competition agreement. Specifically, these notices must be delivered to all current employees and all former employees who were employed after January 1, 2022.

AB 1076 calls for these employee notices to recite that any non-competition clauses (that do not fit an exception to the general prohibition against non-competes) contained in their employment agreements or any separate non-competition agreement are void. The notices must have been delivered to both the last known physical address and email address of the subject employee by February 14, 2024. Failure to provide sufficient notice constitutes unfair competition under California's Unfair Competition Law and may result in injunctive relief or civil penalties for each violation.

The legislative history of this bill indicates that the California legislature is concerned that employees may not know that they are subject to invalid and unenforceable non-compete clauses or agreements, and may also not know their rights as they relate to these non-competes.

Requiring employers to provide notice to employees of void non-competition agreements, and providing employees more effective tools to contest void agreements represent additional steps in California's quest to ensure employee mobility and to crack down on presumptively unfair restraints on competition. Employers with employees in California should review their existing non-competition agreements to determine the extent to which additional compliance with California law may be necessary. Although the February 14, 2024, deadline has passed, it is important for employers to conduct a thorough review of their contracts with employees and distribute any required notices as soon as practicable.

If an employer finds that an employee is subject to an unenforceable non-compete agreement, then that agreement may be void. The law as it relates to the invalidation of other agreements which merely contain a non-compete clause is less clear, but employers should consider entering into an alternative agreement without an unenforceable non-compete clause with employees who are entitled to receive the notices contemplated by AB 1076.

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