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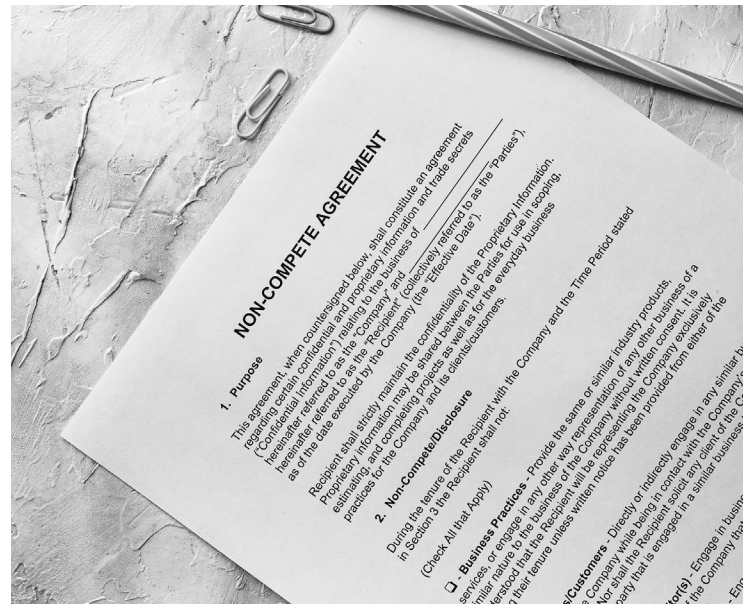
# SB 699 and AB 1076: California enacts further prohibitions on noncompete agreements

By Benjamin R. Buchwalter

California is expanding its longstanding prohibition on non-compete agreements in 2024, in some of the most impactful legislative changes California employers should address in the new year. Effective Jan. 1, 2024, two new laws limiting restrictive covenants will extend the state's consistent trend toward encouraging employee mobility and open competition. Senate Bill 699 prohibits employers from entering into noncompete agreements regardless of where and when the agreement was signed. And Assembly Bill 1076 expressly makes it unlawful for employers to enter into noncompete agreements and imposes steep fines and onerous notice requirements for violations. Together, these laws significantly limit the remaining potential for enforcement of noncompetition agreements in California.

SB 699, signed by Gov. Gavin Newsom on Sept. 1, 2023, prohibits employers from enforcing noncompete agreements considered void and unenforceable under California Business & Professions Code Section 16600. In particular, under SB 699, any contract that is void under Section 16600 is unenforceable regardless of where and when the contract was signed, significantly restricting the ability of out-of-state employers to enforce noncompetition agreements in California. This statute also empowers employees to bring a private cause of action for violations, to seek injunctive relief, actual damages, and attorneys' fees and costs.

Additionally, AB 1076, signed by Gov. Newsom on Oct. 13, 2023, amends Section 16600 to further codify existing precedent limiting noncompetition agreements, such as *Edwards v. Arthur Andersen LLP*, 44 Cal.4th 937 (2008). In *Edwards*, the California Supreme Court held that noncompete agreements in an employment context are void, even if the agreements are narrowly tailored. Following AB 1076, Section 16600 must be construed "broadly" to void all non-compete clauses in an employment context, unless they fall under one of three narrow exceptions (including noncompetes associated with the sale of a partnership, dissolution of a partnership, or dissolution of limited liability interests). Furthermore, AB 1076 applies retroactively as of Jan. 1, 2022; any individuals who were employed after this date with a noncompete clause must be notified that those noncompete clauses are void. Employers must send this notice by



mail and email by Feb. 14, 2024. AB 1076 also adds new Section 16600.1, which provides that it is unlawful for employers to include noncompete clauses in an employment contract. As a result, non-compliance could result in a civil penalty of \$2,500 per violation, in addition to other available damages.

The practical effect of these laws is that employers with California employees, or employers looking to hire California residents for remote work, face additional restrictions on imposing noncompetition agreements, regardless of where they are located. The broad reach of these laws impacts all employers operating in the state. Employers should review their offer letters, confidentiality agreements, and other employment-related documents that might contain unlawful restrictive covenants. Any employers with existing noncompetition agreements should inform employees of changes to previously issued agreements or policies.

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