



california doubles down on its longstanding hostility against noncompete agreements

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While California has long prohibited noncompete agreements (subject to narrow exceptions), two California bills recently signed into law expand the scope of the State's policy against these restrictive covenants. On September 1, 2023 and October 13, 2023, Governor Gavin Newsom signed Senate Bill 699 and Assembly Bill 1076, respectively, two new laws that strengthen the State's prohibition on noncompetes found in California Business & Professions Code Section 16600. Both laws go into effect on January 1, 2024.

SB699: Noncompetes are Void, No Matter Where or When Signed

Section 16600 of the California Business and Profession Code states that "every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void," with only three narrow exceptions in connection with the sale of a business, the dissolution of or dissociation from a partnership, or the dissolution or termination of interests in a limited liability company.

SB 699 expands on Section 16600 to prohibit an employer from entering into or attempting to enforce a noncompete agreement, regardless of whether the contract was signed outside of California. Under the new law, any contract that is void under Section 16600 is unenforceable "regardless of where and when the contract was signed." The new law likewise prohibits an employer or former employer from enforcing a void contract "regardless of whether the contract was signed and the employment was maintained outside of California." SB 699 will be codified as Section 16600.5 of the Business and Professions Code.

The law also provides that an employer who violates the law commits a civil violation. It authorizes an employee, former employee, or prospective employee to bring a lawsuit to enforce the law and allows a prevailing employee to

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recover injunctive relief, actual damages, or both, as well as reasonable attorneys' fees and costs. Previously, many of these claims were litigated as declaratory relief actions to obtain a court order that the alleged offending provision was void. Now, the availability of a private right of action with statutory attorneys' fees raises the risk of litigation in this arena. Furthermore, employers that continue to use employee *nonsolicitation* agreements may face heightened risks under SB 699, as some California state and federal courts have previously found that such post-employment restrictive covenants are tantamount to noncompetes.

Under the new law (assuming it is upheld after likely challenges to its enforceability), an employee who signs a noncompete agreement in another state and then comes to California to work for a new employer will be able to flout the previously signed noncompete agreement (and the new California employer will likewise be able to disregard the previously signed noncompete) — as specifically referenced in the preamble to SB 699. At the same time, the new law may also mean that California-based employers cannot enter into or enforce noncompete agreements with employees who live and work entirely outside of California.