

California Seeks to Strengthen Its Policy Invalidating Noncompete Agreements

Article By:

Julia Y. Trankiem

Michael A. Pearlson

Courts have repeatedly upheld California’s “strong public policy” prohibiting agreements that restrain individuals from “engaging in a lawful profession, trade, or business of any kind.” Indeed, under Section 16600 of the California Business and Professions Code, these agreements—generally referred to as noncompete agreements—are generally void. California now seeks to enshrine additional laws strengthening its prohibition on noncompete agreements.

Senate Bill (“SB”) 699

First, California Governor Gavin Newsom recently signed SB 699 which will go into effect on January 1, 2024. The bill makes it unlawful for employers to enforce noncompete agreements considered void and unenforceable under Section 16600, irrespective of where the agreement was signed or where the worker was employed when he or she executed the agreement. As such, California’s prohibition on noncompete agreements would presumably apply to any out-of-state employer that attempts to enforce such an agreement in California. Further, an employer that

attempts to enforce a noncompete contract that is void would be committing a “civil violation.” Consequently, an employee, former employee, or prospective employee may bring a private action to enforce this section for injunctive relief or the recovery of actual damages and is entitled to recover reasonable attorney’s fees and costs. SB 699 will be codified as Section 16600.5 of the California Business and Professions Code.

Assembly Bill (“AB”) 1076

Second, AB 1078 will now be considered by the state Senate after sailing through the California State Assembly in May 2023. AB 1076 would add a provision to Section 16600 codifying the 2008 California Supreme Court decision in *Edwards v. Arthur Andersen LLP* and void noncompete agreements in employment no matter how narrowly tailored. In *Edwards*, the Court rejected an invitation to relax the statutory restrictions of Section 16600, clarifying “that section 16600 represents a strong public policy of the state which should not be diluted by judicial fiat.” Additionally, AB 1076 would also make it unlawful to include a noncompete clause in an employment contract, or to require an employee to enter a noncompete agreement, which does not satisfy the specified exceptions of Section 16600. Employers would also have to notify current and former employees in writing by February 14, 2024, that any noncompete agreements that they had previously reached in violation of AB 1076 are void. That notice would be required to be sent to the last known address and email address of each former employee.

Implications for Employers

It is imperative for employers both inside and outside of California to be aware of these bills, specifically SB 699 which will soon be

law and has extraterritorial implications. Attempting to enforce noncompete agreements within California may expose current and former employers to liability.

Copyright © 2025, Hunton Andrews Kurth LLP. All Rights Reserved.

National Law Review, Volume XIII, Number 272

Source URL: <https://natlawreview.com/article/california-seeks-strengthen-its-policy-invalidating-noncompete-agreements>