California Expands its Ban on Noncompetes

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Noncompete agreements have long been void under California Business and Professions Code § 16600. Now, Senate Bill (SB) 699 and Assembly Bill (AB) 1076 intensify California's prohibition of such agreements and create a private right of action for employees whose agreements include restrictive covenants. Employers will ring in the New Year with heightened restrictions and fast-approaching notice deadlines as these laws go into effect on January 1, 2024.

Merely Including a Noncompete Provision is Unlawful

In *Edwards v. Arthur Anderson LLP*, the California Supreme Court interpreted Section 16600 to void noncompete agreements in employment contexts, even if the agreement is narrowly tailored. AB 1076 goes beyond merely codifying *Edwards*, making it ***unlawful*** to include a noncompete clause in an employment contract, or to require an employee to enter a noncompete agreement, subject to limited exceptions. A violation of this restriction, or the notice requirements outlined below, constitutes unfair competition under California Business and Professions Code § 17200, punishable by up to $2,500 per violation.

Notice Requirements

AB 1076 also imposes notification requirements on employers. By February 14, 2024, employers must provide written, individualized notice to employees whose contracts include a noncompete clause, or who were required to enter into a noncompete agreement, informing them that such clause or agreement is void. The law further demands this notice be sent to former employees who were employed after January 1, 2022. And, because noncompetes are void in California, employers will also be tasked with identifying former out-of-state employees with such agreements who are now residents of California. Notice must be delivered to both the individual's last known address

and their email address.

Section 16600's Prohibitions Extend Beyond State Lines

Presently, Section 16600 renders void every contract by which anyone is restrained from engaging in a lawful profession, trade, or business. SB 699 augments this restriction making any contract void under Section 16600 is unenforceable regardless of when or where it was signed. Additionally, SB 699 makes it a civil violation for an employer to enter into or attempt to enforce such a contract ***regardless of whether the contract was signed and the employment was maintained outside of California.*** This means that, in California courts, employers will be unable to enforce noncompetes, even against employees who work in states where noncompetes are permitted. The new law further expands the remedies available far beyond declaratory relief. Individuals will be entitled to injunctive relief, damages, and attorneys' fees. Notably, SB 699 does not provide for the recovery of attorneys' fees by employers who prevail in litigation.

Implications for Multi-State Employers

It is yet to be seen how SB 699 will affect employers in other states and whether the new law permits California employers to hire employees subject to noncompete agreements that are valid in another state. What is certain is that the new laws expose employers to potential liability. As such, employers should identify and revise non-compliant agreements and provide notice to all potentially affected current and past employees.

Contact your Vorys attorney if you have any questions about how the further restrictions on noncompetes in California will impact your business.