

Updates

January 22, 2024

Valentine's Day Marks Compliance Deadline for California Noncompete Notification Requirement



For some time now, California law has generally prohibited employers from entering into post-employment noncompete agreements with employees unless an exception applies.

The basis for this prohibition is found in Section 16600 of the California Business and Professions Code, which is usually read to ban contracts that preclude employees from engaging in their chosen lawful profession, trade, or business.

On October 13, 2023, California enacted Assembly Bill 1076, which amended California Business and Professions Code Section 16600 and added Section 16600.1. AB 1076 went into effect on January 1, 2024, and codifies existing case law by making it expressly unlawful for employers to utilize any noncompete agreement with employees that does not satisfy an exception to Section 16600.

AB 1076 follows the enactment of California [Senate Bill 699](#), which also took effect on January 1, 2024. SB 699 prevents employers from enforcing contracts that are void under Section 16600, regardless of where the contracts were signed or the state in which the employee worked. SB 699 also creates a private right of action and authorizes employees to sue for injunctive relief, actual damages, and attorneys' fees for violations.

To further reinforce the public policy against such agreements, AB 1076 creates a new affirmative obligation for employers to send individualized written notices to all current and former employees who were employed after January 1, 2022, and whose contracts include a noncompete clause or who were required to enter into a noncompete agreement, if the provision does not satisfy an exception to Section 16600. AB 1076 does not define the relevant terms used in the legislation, including the term "noncompete agreement." The written employee notices are to be sent by February 14, 2024. The notice must be sent to the employee's last known mailing and email addresses and must specifically inform the employee that the noncompete language is void. A violation of the notification requirement constitutes an act of unfair competition under California's Unfair Competition Law, Business and Professions Code section 17200, et seq., exposing employers to potential liability and civil

penalties for failure to comply.

Noncompete agreements have been the subject of increased federal and state focus and regulation. In 2023, the National Labor Relations Board's (NLRB) general counsel [issued an opinion](#) finding that noncompete agreements, except in limited situations, violate the National Labor Relations Act (NLRA), and the Federal Trade Commission (FTC) has [proposed a ban on noncompete agreements](#) nationwide, with limited exceptions, with a vote on the proposal expected in April 2024.

Given this rapidly changing area of law, employers should contact experienced legal counsel for guidance regarding complying with California's noncompete notification requirements and to review employment agreements for compliance.

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