

THOUGHT LEADERSHIP

LEGAL UPDATES

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Services

Labor & Employment
Non-Competes &
Restrictive Covenants

Professional

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California Further Restricts the Use of Non-Competes

Effective January 1, 2024, California will further restrict the use of post-employment covenants not to compete (non-competes) by authorizing lawsuits against employers who include or seek to enforce void non-compete provisions. In its statement of legislative purpose, the legislature found: “California’s public policy provides that every contract that restrains anyone from engaging in a lawful profession, trade, or business of any kind is, to that extent, void, except under limited statutory exceptions. California has benefited significantly from this law, fueling competition, entrepreneurship, innovation, job and wage growth, equality, and economic development.” The legislature found that California employers continue to include such non-compete clauses, which has a chilling effect on employee mobility. The legislature also found that due to the trend toward remote work and national efforts to recruit talent, out-of-state employers continue to include and seek to enforce non-compete provisions.

In response to these issues, the legislature passed and Governor Newsom signed into law Senate Bill 699, which adds new California Business and Professions Code section 16600.5:

1. Non-compete provisions void under Business and Professions Code section 16600 are unenforceable regardless of where and when the employee signed the provision.
2. Employers cannot attempt to enforce a void non-compete provision even where the employment is outside of California.
3. Employers cannot enter into a contract with an employee or prospective employee that includes a void non-compete provision.

4. “An employer that enters into a contract that is void under this chapter or attempts to enforce a contract that is void under this chapter commits a civil violation.”

See https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB699

An employee, former employee, or prospective employee may sue for injunctive relief, actual damages, and reasonable attorney’s fees and costs.

Section 16600.5 expands an employer’s potential liability for merely including and for seeking to enforce non-compete and non-solicitation provisions. Section 16600.5 also precludes employers outside of California from enforcing non-compete provisions for employees who work in California. We anticipate more litigation under Section 16600.5 challenging non-compete provisions and seeking injunctive relief and attorney’s fees and costs.

What does this mean for employers?

Before January 1, 2024, California employers should review their employment agreements, offer letters, employee handbooks, and policies and delete all void non-compete and non-solicitation restraints.

Contact us

If you have questions regarding the implications of Business and Professions Code section 16600.5 or California’s prohibition against non-competes, please contact Tyler M. Paetkau, Allison Scott, or your Husch Blackwell attorney.