

## **Alert** | Labor & Employment



September 2023

### **California Further Extends the Ban on Employers Entering Noncompete Agreements Starting in 2024**

On Sept. 1, 2023, California Governor Gavin Newsom signed **Senate Bill (SB) 699** into law with at least two significant additions to Section 16600 of the California Business and Professions Code (BPC). First, SB 699 extends the reach of California’s restrictions on noncompete agreements to contracts signed out of state. Second, SB 699 creates a private right of action for employees whose agreements include restrictive covenants. SB 699 will go into effect on Jan. 1, 2024, codified as BPC Section 16600.5.

#### **Summary of SB 699**

California has long prohibited noncompete agreements. Under BPC Section 16600, “every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void.” The few exceptions set forth in Section 16600 that permit enforceability of noncompete agreements include the sale of a business, dissolution of a partnership, or dissolution or termination of interests in a limited liability company.

In SB 699, the Legislature’s findings stated that “California employers continue to have their employees sign noncompete clauses that are clearly void.” Further, the findings stated that “California employers increasingly face the challenge of employers outside of California attempting to prevent the hiring of former employees.” Additionally, the Legislature noted that “California courts have been clear that California’s public policy against restraint of trade law trumps other state laws when an employee seeks

employment in California, even if the employee had signed the contractual restraint while living outside of California and working for a non-California employer.”

Under SB 699, agreements restraining trade are void and unenforceable regardless of where and when the contract was signed and whether employment was maintained outside of California. Further, SB 699 states that an employer that enters into, or attempts to enforce, a noncompete agreement has committed a civil violation. SB 699 also provides for an employee, former employee, or prospective employee to bring a private right of action to enforce the prohibition of noncompete agreements under Section 16600 for injunctive relief, actual damages, and if they prevail, recovery of reasonable attorney’s fees and costs.

The new Section 16600.5 to the BPC, effective Jan. 1, 2024, will read as follows:

- (a) Any contract that is void under this chapter is unenforceable regardless of where and when the contract was signed.
- (b) An employer or former employer shall not attempt to enforce a contract that is void under this chapter regardless of whether the contract was signed and the employment was maintained outside of California.
- (c) An employer shall not enter into a contract with an employee or prospective employee that includes a provision that is void under this chapter.
- (d) 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.
- (e) (1) An employee, former employee, or prospective employee may bring a private action to enforce this chapter for injunctive relief or the recovery of actual damages, or both. (2) In addition to the remedies described in paragraph (1), a prevailing employee, former employee, or prospective employee in an action based on a violation of this chapter shall be entitled to recover reasonable attorney’s fees and costs.

### **A National Trend of Prohibiting Noncompete Agreements?**

California’s enactment of SB 699 adds to what may become a national trend prohibiting noncompete agreements and restrictive covenants under the employment context. Outside of long-standing prohibitions on their use in California, North Dakota, Oklahoma and, most recently, Minnesota, New York could soon be the fifth state to join the trend, as a bill prohibiting employers from using noncompete agreements has been enacted by the legislature but has not yet been acted on by the governor. On the federal level, in response to an executive order from President Biden, the Federal Trade Commission issued a notice of proposed rulemaking on Jan. 5, 2023, for a rule banning noncompete clauses.

### **Key Takeaways**

- Effective Jan. 1, 2024, under California law:
  - Noncompete agreements are void and unenforceable regardless of where and when the contract was signed and whether employment was maintained outside of California.
  - An employer that enters into, or attempts to enforce, a noncompete agreement will be deemed to have committed a civil violation.

- To enforce the prohibition on noncompete agreements, an employee, former employee, or prospective employee can bring a private right of action for injunctive relief, actual damages, and if they prevail, recovery of reasonable attorney’s fees and costs.
- California and a handful of other states are increasingly assessing the enforceability of noncompetes, and New York may be next.

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