

Update to California Law Outlawing Noncompetes

For companies with employees in California, it has long been accepted practice that noncompete provisions in employment agreements are unenforceable. California courts have ruled that such provisions are invalid under California's general prohibition against restraints of trade (Ca. Bus. and Prof. Code Sec. 16600). California has now adopted a law that codifies this general understanding and goes two steps further -- it makes such provisions illegal, and provides employees a cause of action to sue if they are subject to such provision (new Ca. Bus. and Prof. Code Sec. 16600.1 and 16600.5).

Under the new law, which went into effect on January 1, 2024, an employer is prohibited from entering into a contract with an employee or prospective employee that includes a noncompete provision, which may also include provisions prohibiting solicitation of clients, vendors and/or employees. If an employer does so, it is a civil violation, subject to fines and penalties. Also, an employee who is subject to a prohibited noncompete provision (unless notified that the provision is void, as explained below), may sue their employer (or prior employer) for injunctive relief or for damages, if the employee has suffered losses due to such provision. An employee who prevails in such a lawsuit shall also be entitled to recover legal fees and costs.

In addition, under the new law, any employer who has a current employee in California, or a former employee in California employed after January 1, 2022, whose employment contract includes a noncompete provision, or who was required to enter

into a noncompete agreement, must send notice to the employee that such provision is void. Specifically, the new statutory provisions require that the notice:

- ◆ Be in writing;
- ◆ Be an individualized communication to the employee;
- ◆ Be mailed or hand delivered to the last known address of the employee;
- ◆ Be e-mailed to the employee;
- ◆ State that the employee's noncompete clause or noncompete agreement is void; and
- ◆ Be given by February 14, 2024.

Note that the new law applies to noncompete provisions in any contract with a California employee, no matter whether such contract was signed in the state of California, so employees who have relocated to California are also protected under this new law, and have the ability to sue their employers (or ex-employers) if they are subject to a noncompete provision and have not received the above notice.

For any company with employees living in California who has been including noncompetes in their employment agreements or who has been using noncompete agreements in their onboarding materials, it is time to update your agreements, and provide notice as quickly as you can.



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This advisory is for information purposes only, and does not constitute legal advice. If you would like to discuss the impact of the new California law, please contact Jeremy Cohen at (617) 350-6800, or email him at jeremy.cohen@gesmer.com.