



New Laws Enhance California's Noncompete Prohibitions

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Key Takeaway:

Employers with a presence in California should review their non-compete arrangements, even for employees outside of California, to determine whether (a) any notice is required to be given to current and certain former employees, (b) any non-compete provisions would be deemed unlawful by California and (c) any agreements need to be amended or proactively waived.

Two new laws (SB 699 and AB 1076) strengthening California's ban on certain noncompete agreements became effective January 1, 2024. California law has long provided that noncompete agreements are invalid under Business and Professions Code section 16600 ("Section 16600"), even if narrowly drawn, unless they fall within an applicable statutory exception. The only three exceptions are (1) sale of goodwill or of ownership interest in a business, (2) dissolution or dissociation from a partnership, and (3) dissolution or dissociation from a limited liability company. California courts interpret these three statutory exceptions narrowly.

The new legislation changes Section 16600 in four important ways.

- 1. Noncompetes Now Unlawful:** Noncompete agreements not falling into one of the three exceptions were previously void. The new law deems it "**unlawful** to include a noncompete clause in an employment contract, or to require an employee to enter a noncompete agreement, that does not satisfy an exception." (emphasis added).
- 2. Nationwide Scope:** California law purports to void and prohibit employers from seeking to enforce unlawful noncompete agreements regardless of (i) where or when the employee signed the agreement, (ii) where the employment is maintained and (iii) the governing law of the noncompete agreement.
- 3. Notice Requirement:** Employers must **notify**, by February 14, 2024, in an individualized writing delivered physically and by email, every current employee and former employee who was employed after January 1, 2022, who is subject to an invalid noncompete agreement that the agreement/clause is void. Failing to provide notice "constitutes an act of unfair competition" and could result in a civil penalty of up to \$2,500 per violation.

4. **Private Right of Action:** The law expressly provides employees with a private right of action to seek injunctive relief, actual damages, and attorneys' fees.

Employers should immediately assess their noncompete agreements and determine which, if any, of their current or former employees must be notified. Please reach out to your Winston & Strawn LLP contact if you have any questions or would like our assistance.

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[Michael Roche](#)

[Jason Campbell](#)

[Cardelle Spangler](#)

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Jason Campbell



Cardelle Spangler