

Masuda Funai Employment Newsflash: California Strengthens and Expands Non-Compete Ban

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Practices: Employment, Labor & Benefits

Executive Summary

- On September 1, 2023, California Governor Gavin Newsom enacted Senate Bill 699 (SB 699), making it unlawful for employers to enter into or attempt to enforce non-compete agreements and establishing that non-compete agreements are void in California regardless of where the employee worked when the agreement was signed.
- On October 13, 2023, Gov. Newsom signed Assembly Bill 1076 (AB 1076) into law that expressly makes it unlawful for employers to include post-employment non-compete clauses in employment contracts or require employees to enter post-employment non-compete agreements.
- Under AB 1076, employers must provide all current and certain former employees with individualized written notices that any post-employment non-compete clause in an employment agreement and/or post-employment non-compete agreement with the employer is void by February 14, 2024.
- Both new laws take effect on January 1, 2024.

SENATE BILL 699

Signed into law on September 1, 2023, SB 699 furthers California's protections for employee mobility and seeks to void out-of-state employee non-compete agreements. Under existing California law, specifically California's Business and Professions Code's Section 16600, non-compete agreements with California employees are typically void. Section 16600 provides that "every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void." California courts have consistently held that Section 16600 applies to post-employment non-competition covenants along with customer non-solicitation and non-interference covenants.

SB 699 goes a step further and creates Business and Professions Code Section 16600.5, which provides that an employer shall not enter into or attempt to enforce a noncompetition agreement with an employee or prospective employee that is void under Section 16600 – and makes it a civil violation to do so. Under the new law, a non-competition agreement is void regardless of the state in which it was signed and when the agreement was signed. Further, SB 699 prohibits an employer or former employer from attempting to enforce a

contract that is void under Section 16600, even if the contract was signed outside of California and even if the “employment was maintained outside of California.”

SB 699 permits employees and prospective employees to file a lawsuit to prevent the employer or prospective employer from enforcing a non-competition agreement. Prior to this new law, most courts directly addressing the issue held that the mere inclusion of restrictive covenants within an agreement with the employee did not create a right of action against employers. That private right of action is now directly encoded into the new Section 16600.5, which includes the potential for remedies of injunctive relief, damages, and attorney fees for prevailing employees.

ASSEMBLY BILL 1076

AB 1076 both amends Business and Professions Code Section 16600 and creates another new section: Section 16600.1. The new Section 16600.1 declares it unlawful to include a non-compete clause in an employment contract and confirms California precedent that any non-compete clauses, no matter how narrowly tailored, are void unless they satisfy a statutory exception. Notably, the only exceptions to the prohibition in Section 16600 are for non-compete agreements entered into by the seller of a business or by a member or partner of a business.

The new law also extends application of the ban on non-compete agreements to include situations where the person being restrained from engaging in a lawful profession, trade or business is *not* a party to the contract (i.e., business-to-business agreements). Furthermore, the new Section 16600.1 requires employers to provide written notice to current and former employees who were employed after January 1, 2022 that any non-compete clauses or non-compete agreements previously signed by the employees are void. The deadline for employers to provide this notice is February 14, 2024.

Both SB 699 and AB 1076 go into effect on January 1, 2024, and will operate retroactively.

TAKEAWAYS AND NEXT STEPS FOR EMPLOYERS

While California’s push to curtail the use of employee non-compete agreements is nothing new, SB 699 and AB 1076 collectively expand the scope of these restrictions and the potential consequences for violating them. Accordingly, California employers should consider reviewing their employment agreements with existing and former employees hired after January 2022 to determine whether they include restrictive covenants of any kind, and if so, develop a plan to satisfy the mandated notice requirement. California employers should also consider modifying agreements with current and prospective employees that contain potentially void non-competition provisions.

If you have any questions about the potential ramifications of these new laws on your workplace, please contact [Kevin S. Borozan](#) or any other member of Masuda Funai’s Employment, Labor and Benefits Group.