

REQUIRED NOTICE OF VOID NONCOMPETE AGREEMENTS

By Maureen M. Duffy

California Governor Gavin Newsom signed two bills in September and October 2023, which took effect on January 1, 2024, that require action prior to February 14, 2024.

New Laws

As you may be aware, California law (Business and Professions Code section 16600) has long held that any contract that restrains anyone from engaging in a lawful trade or business is void and unenforceable (with certain narrow exceptions for the sale of a business or agreements involving the dissolution of, or disposition of an interest in, a partnership or limited liability company). The new laws confirm that these restrictions apply in the employment context, regardless of how narrowly-tailored a noncompete or non-solicitation agreement might be. In addition, these new amendments go much farther and provide that it is a violation of law to enter into or attempt to enforce a void noncompete or non-solicitation agreement. Significantly, current, former, and prospective employees now have a civil right of action to seek injunctive relief and/or actual damages, as well as attorney's fees and costs, if employers violate this law. In addition, the reach of Section 16600 has been extended to include contracts where the restrained party is not a contract signatory, which means, for example, no-recruit agreements between businesses are likely prohibited.

Required Notice by Employers

The Legislature also created a new Section 16600.1, pursuant to which **employers are required to notify employees and former employees** whose contracts included a void

noncompete clause or who were required to enter into a noncompete agreement that does not meet one of the statutory exceptions. Employers must notify all current employees (regardless of when they entered into a void agreement) as well as former employees who were employed at any time after January 1, 2022. Such notice must inform the recipient that the noncompete clause or agreement is void and the notice must be:

- An individualized written communication;
- Delivered to each affected employee/former employee's last known address and e-mail address; and
- Given by February 14, 2024.

Failure to comply with the notice requirement constitutes a per se violation of California's Unfair Competition Law (Business and Professions Code section 17200, et seq.), with potential consequences including injunctions, restitution awards, or actions by the Attorney General.

In addition, the new amendments address out-of-state noncompete agreements and prohibit employers from enforcing them against California employees. New Business and Professions Code section 16600.5 provides that noncompete agreements violating California law are unenforceable in the state, regardless of where the agreement was signed or where the employee worked when it was signed. In other words, noncompete agreements are void and unenforceable as to (1) employees who work for California-based employers, even if they live and work outside California and (2) current, former, and prospective employees in California, even if

they signed a non-compete agreement while living outside of California and work/worked for a non-California employer.

Given these significant new restrictions on noncompete agreements, as well as the short timeframe to comply with the new rules, it is suggested that employers promptly take steps to inventory and review existing agreements with current and former employees as well as template agreements that may contain void noncompete provisions. This may include offer letters, employment agreements, severance agreements, confidentiality agreements, employee handbooks, proprietary information and invention agreements, employee and client non-solicitation agreements, or any other agreements that may restrain someone from engaging in a lawful profession, trade, or business. Please consider amending or revising agreements with void noncompete agreements and act quickly to issue the required notices.

If you have any questions regarding this new law, need assistance with reviewing your company's policies, or issuing the required notices, please don't hesitate to reach out to Maureen Duffy.



Maureen Duffy
Partner
mduffy@donahue.com

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