

December 1, 2023

Valentine's Day 2024 Is No Sweetheart for Employers Who Include Restrictive Covenants in Employee Agreements for Current or Former California Employees

By: [Leah Lively](#)

California Business and Professional Code sections 16600 to 16607 already invalidate agreements restricting California employees from pursuing any lawful profession, trade, or business, with limited exceptions mainly in the sale of businesses. Starting January 1, 2024, things are going to get more difficult (and potentially costly) for employers.

Two laws recently signed by Governor Newsom further restrict non-competition clauses and place affirmative notice obligations on employers with California employees. AB 1076 prohibits employers from entering into non-competition agreements with California employees that are void under California law. SB 699 prohibits the enforcement of such agreements, even if they were signed in connection with employment conducted *outside* of California. **Significantly, SB 699 aims to prevent the enforcement of non-competition agreements made outside of California if the employee relocates to California or seeks employment with a California company.**

Moreover, AB 1076 mandates employers to send individual notices, **by February 14, 2024**, to current and former employees (employed after January 1, 2022) who entered into agreements with non-compete clauses that are void under California law. The notice must tell the employee his/her/their non-compete is void and be mailed **and** emailed to each employee.

Putting teeth into the law, SB 699 establishes a private cause of action, allowing a prevailing employee, former employee, or prospective employee to seek injunctive relief, actual damages, and reasonable attorneys' fees and costs. AB 1076 deems the violation of section 16600 an act of unfair competition, exposing employers to liability.

Despite the imminent effective date and the significant consequences for violators, uncertainties remain. For instance, the new laws do not define what a non-competition clause is and so it is unclear whether they extend to non-solicitation agreements. Based on California's legal history, it is likely a California court would find that the laws encompass customer non-solicitation provisions. The legislation also does not address California Labor Code section 925, which previously supported the enforcement of non-competition agreements for California employees under certain circumstances. Additionally, it is uncertain whether SB 699 restricts California-based employers from entering into non-competition agreements with employees located outside of California. Future litigation is expected to provide clarity, and we will closely monitor legal developments.

Next Steps

Employers, whether they are based in California or have (or have had) employees in California, must prepare for the February 14th deadline. To do this employers should:

- Promptly review all employee agreements with restrictive covenants (even if not labeled as a “non-competition” clause or restrictive covenant);
- Compile a list of current and former employees requiring notice under AB 1076, including last known address and email; and
- Prepare new employee agreements for employees to sign that include robust confidentiality and trade secrets clauses, ensuring that valid consideration is provided.

If you have questions about ensuring compliance with California’s non-compete laws or need assistance drafting notification letters, we encourage you to contact Leah Lively.



Leah Lively

Shareholder

(503) 226-8638

llively@buchalter.com

AZ | CA | CO | OR | UT | WA

BUCHALTER.COM