



**Featured News**

**ALERT**

**New Legislation Voids Out of State Non-Compete Agreements**

On September 1, 2023, California Governor Gavin Newsom signed legislation that furthers the state's protections for employee mobility and seeks to void out of state employee non-compete agreements. Specifically, the new law provides that any contract that is void under California law is unenforceable regardless of where and when the employee signed the contract.

Under existing California law, non-compete agreements with California employees are typically void. California Business and Professions Code Section 16600 provides "Except as provided in this chapter, every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void."

The new law goes a step further and provides in Section 16600.5 to the Business and Professions Code:

- a) Any contract that is void under this chapter is unenforceable regardless of where and when the contract was signed.
- b) An employer or former employer shall not attempt to enforce a contract that is void under this chapter regardless of whether the contract was signed and the employment was maintained outside of California.
- c) An employer shall not enter into a contract with an employee or prospective employee that includes a provision that is void under this chapter.
- d) An employer that enters into a contract that is void under this chapter or attempts to enforce a contract that is void under this chapter commits a civil violation.
- e)
  - (1) An employee, former employee, or prospective employee may bring a private action to enforce this chapter for injunctive relief or the recovery of actual damages, or both.



(2) In addition to the remedies described in paragraph (1), a prevailing employee, former employee, or prospective employee in an action based on a violation of this chapter shall be entitled to recover reasonable attorney's fees and costs.

The law is effective January 1, 2024.

The impact of this law is that employers with multiple locations across the country, whose employees entered into non-compete agreements that were valid in the jurisdiction where they were entered into, will be unable to enforce those agreements against such employees who relocate to California. Employers located in California who entered into valid non-compete agreements with employees working remotely in other jurisdictions will also be unable to enforce these agreements. There will likely be constitutional and other legal challenges to this legislation.

In light of these developments, California employers should review their employment agreements, offer letters, employee handbooks, and policies and remove any non-compete provisions that may continue to exist with their California employees, consult with legal counsel concerning the implication of this law on their out of state workers, ensure that their recruiting and hiring practices take into account the new legislation, and closely follow the new and proposed legislation coming out of California and any legal challenges that undoubtedly will occur.



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