NEWS AND COMMENTARY

California Law: Noncompete Agreement Ban Takes Effect

PUBLISHED
October 11, 2024

AUTHOR
Purdue Global Law School

California has disfavored noncompete clauses in the employment law context for over a century. Before 2024, all this meant was that a California employer who tried to enforce a noncompete clause against a California employee would leave court with a loss. Now though, with the January 2024 passage of two groundbreaking laws, California no longer merely disfavors noncompetes; it expressly outlaws them (with limited exceptions).

What's more, under the new laws, California's prohibition against noncompetes now no longer stops at the state's border; it applies to employers located anywhere in the U.S. One of the new laws also provides a cause of action against any employer that requires a noncompete. This means a losing employer could leave a California court not only with a loss but also with a judgment against it for injunctive relief, actual damages, and attorneys' fees.

CHAT

What Are Noncompete Agreements?

Noncompetes are a type of "restrictive covenant," so called because these promises restrict an employee's work options after they leave their employer.

Restrictive Covenants

The main types of restrictive covenants found in the employment law context are:

- Noncompete – A promise not to compete against a former employer by going to work for a competitor (or by starting a business that competes with that employer)
- Nonsolicitation – This can take two forms:
    - A promise not to solicit a former employer's clients
    - A promise not to solicit a former employer's employees (also called a "no-raid" agreement)
- Nondisclosure – A promise not to use or disclose a former employer's confidential information

California's View — Noncompetes Equal Unfair Competition

It's one thing to prevent an employee from actually harming a former employer by using or disclosing a former employer's trade secrets or stealing their clients. But it's questionable whether an employer is actually hurt when a former employee (particularly one below the executive level) simply goes to work for a competitor. Because of this, the California courts and legislature view noncompete agreements in the employment law context as unfair competition.

>>Read More: No-Poaching and Wage-Fixing Agreements Draw Antitrust Scrutiny

AB 1076 and SB 699: New Teeth for an Old Law

California law has disfavored noncompete agreements in the employment law context since 1872 — when the legislature enacted the law that ultimately became **§ 16600 of the state's Business and Professions Code (Code)**. Before 2024, § 16600 stated

simply that, with limited exceptions, contracts that restrain a person from work were void. This meant a California employer couldn't enforce a noncompete against a California employee.

As of January 1, 2024, however, California's new laws — Assembly Bill **(AB) 1076** and Senate Bill **(SB) 699** — give teeth to § 16600, and sharp ones at that. The ban on noncompetes no longer applies only to California employers but to employers located anywhere in the U.S. seeking to stop a California employee from working in the state. And employers now face much more than just an unenforceable contract; those who run afoul of the new laws also face civil penalties as well as lawsuits that could leave them paying actual damages and attorney's fees.

AB 1076 Makes Noncompetes Unlawful

The most significant feature of AB 1076 is its addition of § 16600.1, which provides:

- Noncompetes in the employment law context are expressly unlawful.
- Employers must notify California employees (and former employees) hired after January 1, 2022, that their noncompetes are void. (Employers had a deadline of February 14, 2024, to do this.)
- Violations of § 16600.1 are deemed acts of unfair competition under **Chapter 5** of the California Business and Professions Code, which provides for a **civil penalty** of up to $2,500 for each violation.

SB 699 Covers Employers Outside California and Subjects Violators to Significant Costs

SB 699 adds § 16600.5, which provides the following:

- The prohibition against noncompetes protects a California resident seeking to work in the state, even if the employer is located in another state where such agreements are permitted.
- It is a civil violation for any employer to require a California employee to sign a noncompete.

- A California employee has a private right of action against any employer or former employer who required them to sign a noncompete, with a right to injunctive relief, actual damages, and attorney's fees. This cause of action is retroactive, making it vital for California employers to address any noncompetes immediately.

Is a Noncompete Allowed for a California Resident Who Works Outside the Golden State?

It remains to be seen. **Section 925** of the California Labor Code gives a California resident *working in California* the protections of California law. However, SB 699 is silent as to whether its protections apply to a California resident seeking to work in another state. This will almost surely be an issue in future litigation.

>>Read More: States Increasingly Limit Noncompete Agreements With Physicians

California's Noncompete Ban — the Strictest but Not the Only

Although California's noncompete laws are the farthest-reaching and most severe of any in the nation, the Golden State is not the only place with a general ban on noncompetes in the employment law context. **Minnesota** and **Oklahoma** have also introduced general bans, and **South Dakota** has declared certain noncompetes void. In addition, the Federal Trade Commission (FTC) has introduced a rule banning noncompetes for all workers.

FTC Final Rule Set Aside by Texas Federal Judge

In April 2024, the FTC announced a **final rule** banning noncompetes for all workers (with an exception only for certain senior executives), which was intended to go into effect on September 4, 2024. The final rule would grandfather existing noncompetes for certain senior executives but render all other noncompete agreements unenforceable. Like the new California law, the FTC final rule would require employers to notify affected employees that their noncompetes are no longer valid.

However, on August 20, 2024, a federal judge in Texas set aside the FTC final rule, holding that the FTC had overstepped its authority in issuing the non-compete ban.

The FTC has said it may appeal the ruling, but for now, the final rule will not go into effect in September. Because a federal court in Pennsylvania reached a different conclusion than the Texas court, there is now a circuit split regarding the FTC final rule, which may mean the ultimate resolution of the matter could be decided by the U.S. Supreme Court.

Today's New Noncompete Laws, Tomorrow's Lawyers

Future lawyers will need to be up to speed on the laws regarding restrictive covenants such as noncompete clauses, not only in California but around the United States.

>>Read More: The Law Student's Guide to 10 Top Areas of Legal Practice

Stay up to date on the most current legal developments in California and the rest of the nation with Purdue Global Law School.

Purdue Global Law School offers an **online Juris Doctor**. Graduates of our program are academically eligible to sit for the California bar or, with an approved petition, for the Indiana bar. If you wish to advance your legal education but do not intend to become a practicing attorney, you may consider an **online Executive Juris Doctor**.

Single law courses are also available to help you explore a particular area of law without committing to a full degree program. **Request more information** today.

ABOUT THE AUTHOR

Purdue Global Law School

Established in 1998, Purdue Global Law School (formerly Concord Law School) is Purdue University's fully online law school for working adults.

FILED IN: NEWS AND COMMENTARY

MOST POPULAR POSTS

[Indiana's Stand Your Ground Law: (Far) Beyond the Castle Doctrine]

[California Law: Noncompete Agreement Ban Takes Effect]

[E-Signatures: What Are the Legal Requirements?]

[Conflicting State, Federal Laws Make Drug Testing Policies Tricky]

NOTES AND CONDITIONS - PLEASE READ

JD Program Bar Exam Eligibility: Purdue Global Law School JD graduates who meet state regulatory requirements may apply for admission to the State Bar of California, Connecticut Bar Examining Committee, or — with an approved petition — the State Bar of Indiana.

Study at, or graduation from, this law school does not qualify graduates to take the bar examination or to satisfy the requirements for admission to practice in jurisdictions other than California, Connecticut, or — with an approved petition — Indiana. Purdue Global Law School cannot guarantee that any individual's waiver petition will be granted. Graduates who earned their JD degree in 2024 or later are eligible upon graduation to sit for the Connecticut Bar Exam through 2027, at which time Purdue Global Law School will seek renewal. After receiving a law license in California, Connecticut, or Indiana, graduates may also apply to sit for the bar exam in North Carolina and Wisconsin. There may be additional eligibility requirements to be admitted in California or any other state. Refer to Purdue Global's **State Licensure and Certifications** page for state-specific requirements.

EJD Program: Except as provided in rule 4.30 of the Admissions Rules (Legal education in a foreign state or country), completion of a professional law degree program at this law school other than for the Juris Doctor degree does not qualify a student to take the California Bar Examination or satisfy the requirements for admission to practice law in California. It may not qualify a student to take the bar examination or to satisfy requirements for admission to the practice of law in any other jurisdiction. A student who intends to seek admission to practice law should visit Purdue Global's **State Licensure and Certifications** page for state-specific requirements. Students are highly encouraged to confirm state requirements from the appropriate bar admissions office for their state of residence.

ABOUT

STUDENT EXPERIENCE

ALUMNI

BLOG

Cookies Settings

Site Map

Privacy Policy

Terms of Use

CHAT