Legal Update Article

How California's New Limitations on Restrictive Covenants Affect the Technology Industry

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Beginning January 1, 2024, two new California statutes will impose additional limitations on restrictive covenants in employment agreements in the state.

Technology companies are no strangers to employee restrictive covenants and ask workers to sign such agreements regularly. When used correctly, such covenants safeguard trade secrets and protect client relationships. California technology companies also are no strangers to California's strong position against restrictive covenant agreements. California law *voids* contracts that restrain an employee from engaging in a lawful profession, trade, or business of any kind.

California's Business and Professions Code Section 16600, on the books since 1872, states, "[E]very contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void." Courts long have interpreted Section 16600 to prohibit post-employment non-competition, non-solicitation of customers, and non-solicitation in employee agreements, with few exceptions.

With two new statutes effective January 1, 2024, California will double down on its long-standing position. Therefore, California employers, including in the technology industry, should consider revisiting any current or future use of restrictive covenants.

Senate Bill (SB) 699

SB 699 creates Business and Professions Code § 16600.5 and reiterates existing law and goes further. Under SB 699, any contract that is void under Section 16600 also is *unenforceable, regardless of where and when the contract was signed.*In addition, an employer or former employer may not attempt to enforce a contract that restricts an employee's ability to engage in a lawful profession, trade, or business, even if the contract was signed outside of California and the employment was maintained outside of California.

Moreover, SB 699 prohibits an employer from entering into a contract with a current or prospective employee that includes non-compete clauses and other restrictive covenants that are void under Section 16600. Employers who violate SB 699 could be liable for civil violations.

Most importantly, SB 699 *adds explicit enforcement rights for employees regarding restrictive contracts, including recovery of attorneys' fees.*

Assembly Bill (AB) 1076

AB 1076 creates new Business and Professions Code Section 16600.1 and goes further still than SB 699. AB 1076 makes it unlawful to impose non-compete clauses on employees. It codifies existing case law that construes non-compete provisions as

void under Section 16600 and makes non-compete provisions not just void, *but unlawful.*

Significantly, the new law also includes mandatory notice requirements. It requires that employers notify current and former employees (employed after January 1, 2022) that any non-compete agreement or non-compete clause contained within an agreement the current or former employee signed is void, unless the agreement or clause falls within one of the statutory exceptions. Such notices must be provided by next Valentine's Day, February 14, 2024.

What This Mean for Tech Companies

While tech companies have grappled with balancing California's laws with the need to protect technological innovation, SB 699 and AB 1076 may mean this balancing act will extend beyond California's borders. It is clear that there are new tools for employees to challenge restrictive covenants in their agreements.

While waiting for the specific interpretations of these laws to emerge, tech companies should consider inventorying their current restrictive covenants, identifying any current and former employees to whom they must provide the notice that AB 1076 requires, revising agreements where needed, and evaluating any potential enforcement of existing restrictive covenants.

If you have questions about SB 699, AB 1076, or other restrictive covenant issues, please contact a Jackson Lewis attorney to discuss.