Proskauer

Prohibition Against Non-Competes Expands in California

Employee Benefits & Executive Compensation on **September 19, 2023**

On September 1, 2023, California Governor Gavin Newsom signed Senate Bill 699, which amends California Business & Professions Code Section 16600 to prohibit an employer from entering into or attempting to enforce a non-compete agreement regardless of whether the contract was signed outside of California. The law goes into effect on January 1, 2024.

Previously, California law banned non-compete agreements, subject to limited exceptions. Section 16600 of the California Business and Profession Code states that "every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void." By adding Section 16600.5 to the Business & Professions Code, SB 699 expands the restrictions on non-compete agreements to contracts entered outside of California.

The legislative findings in the bill detail the public policy interests driving the expansion of Section 16600. While non-compete clauses in employment contracts are extremely common throughout the United States, research has shown that they "stifle economic development, limit firms' ability to hire[,] and depress innovation and growth." The legislature suggested that California has "benefited significantly[]" from prohibiting non-compete agreements, "fueling competition, entrepreneurship, innovation, job and wage growth, equality, and economic development." Since "the market for talent has become national and remote work has grown, California employers increasingly face the challenge of employers outside of California attempting to prevent the hiring of former employees." SB 699 preserves California's competitive business interests by "protecting the freedom of movement of persons whom California-based employers wish to employ to provide services in California."

Under the new law, any contract that is void under Section 16600 is unenforceable "regardless of where and when the contract was signed." It prohibits "an employer or former employer from attempting to enforce a contract that is void regardless of whether the contract was signed and the employment was maintained outside of California." Furthermore, the law provides that an employer who violates the law commits a "civil violation." To that end, it authorizes an employee, former employee, or prospective employee to bring a lawsuit to enforce the law by seeking injunctive relief, actual damages, or both, and entitles a prevailing employee to recover reasonable attorneys' fees and costs.

Notably, SB 699 cements California's public policy interests against non-compete agreements and expands employees' enforcement rights for challenging non-compete agreements in California. The law will likely lead to even more legal battles between California employers and out-of-state employers seeking to prevent former employees from working for California competitors. It will be interesting to see the effect that SB 699 will have on out-of-state employers that have secured a judgment enforcing a non-compete in another state, such as in *Advanced Bionics Corp. v. Medtronic, Inc.*, 29 Cal. 4th 697 (2002), in which the California Supreme Court held that comity principles impose limits to the scope of Section 16600 and to the reach of California's public policy disfavoring non-competes.

In *Advanced Bionics*, an employee signed an enforceable non-compete in Minnesota with Medtronic and thereafter resigned his employment and went to work for Advanced Bionics, a California competitor to Medtronic. Simultaneous litigation ensued in both California and Minnesota, but the California Supreme Court declined to apply California law voiding non-competes to the Minnesota agreement, explaining that "exceptional circumstances [did not exist] that outweigh[ed] the threat to judicial restraint and comity principles." While it remains to be seen how if at all SB 699 will be harmonized with the comity principles set forth in *Advanced Bionics*, the new law will make it more likely than ever that out-of-state employers will commence litigation early and often against employees in their home jurisdictions who are moving to California in an effort to enforce the non-compete before a California court can get around to striking down the provision.

We will continue to closely monitor these developments.

View original.

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