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It's Almost Valentine's Day – And Love and Noncompetes Are In the Air!

California Employment Law Update on **February 6, 2024**

As we previously reported, California recently enacted AB 1076, which reinforces the state's broad statutory ban on noncompete agreements. The law took effect on January 1, 2024, and expressly codifies *Edwards v. Arthur Anderson LLP*, 44 Cal. 4th 937 (2008), a California Supreme Court opinion barring any noncompete, no matter how narrowly tailored it may be. The new law also affirms that California's prohibition against noncompete agreements is not limited to contracts in which the person being restrained from engaging in a lawful profession, trade, or business is a party to the contract. While the limits of this provision have yet to be tested in court, at the very least it would appear to codify existing case law prohibiting "no-hire" agreements between and among employers.

Proving that romance is not dead in Sacramento, the new law imposes a strict notice requirement on employers with a fast-approaching Valentine's Day deadline. By February 14th, employers must notify current employees and former employees (who were employed after January 1, 2022) in writing that any unenforceable noncompete clause or agreement they may have signed is void. (An accompanying bouquet, of course, is optional.) The notice must be in the form of a "written individualized communication" delivered to the employee's last known address and email address. Failure to send this notice could constitute a violation of California's Unfair Competition Law. With the notice deadline one week away, employers who have not done so already should review their existing agreements to determine whether and to whom notice may be required.

Of course, there are some noncompete agreements that *are and remain enforceable* in California, including those that accompany the sale of goodwill of or an ownership interest in a business entity or the dissolution of or disassociation from a partnership or limited liability company. It is advisable to consult counsel to determine the applicability of any of these exceptions to the general prohibition against noncompetes.

While AB 1076 certainly shows employers no love, employers did receive a sweet treat of sorts last week when AB 747 failed to advance in the California legislature. The bill would have imposed a $5,000 per employee penalty on employers for certain violations of California's noncompete ban and significantly narrowed the sale-of-business exception to ownership interests of 10% or more (up from "less than 3%" under current governing case law). While bad ideas rarely fade away easily in Sacramento, for now at least, this one seems to have hit a roadblock.

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