

California Further Tightens Restrictions on Non-Compete Clauses

Non-compete agreements are now entirely unenforceable in California courts, even if signed outside of the state.

Reported by PAUL MULHOLLAND

California's new restrictions on non-compete agreements, which took effect on January 1 in the form of two separate statutes, prohibit employers from entering into or enforcing non-compete agreements and require employers to inform past employees that their non-compete agreement is now void. The two statutes expanded on previous restrictions established in 2017.

A non-compete agreement is a contract an employee signs, normally as a condition of employment, agreeing not to compete with their employer by starting a new business or joining a competitor for a set period of time after their employment has ended.

The new rules, while affecting all businesses, has gotten particular attention from [registered investment advisers](#), whose client base is often a key part of their practice. In early 2023, when the Federal Trade Commission proposed a national ban on non-compete contracts, the Investment Adviser Association, which broadly agreed with the proposed ban, called on the FTC to exempt senior-level employees involved in the creation of proprietary items, including strategy. The proposal is still pending decision.

California Senate Bill 699 makes non-compete contracts unenforceable in California, even if they were signed in another state. This applies to remote workers based in California and to Californians that commute to another state, Gabor says.

Additionally, via California Assembly Bill 1076, California employers must, by February 14, inform any past employees still subject to a non-compete agreement that it is now void. California workers are also entitled to a private right of action for civil damages against employers that attempt to improperly enforce a non-compete clause.

David Gabor, a partner in the Wagner Law Group, says there is some evidence of employers in other states that do business in California reducing their use of non-competes to limit their legal risk or simply to maintain policy uniformity and training nationwide.

Partially as a consequence of the non-compete prohibition, Gabor says he has seen the use of non-solicitation agreements grow. A non-solicitation agreement is an agreement not to take the previous employer's customers when changing jobs or starting a new business, a contract not banned in California.

Gabor says the ban on non-competes is intended to improve worker mobility. It also incentivizes California employers to value employee retention more by providing better compensation so that workers are less likely to leave and compete against them.

There is “momentum on a national level” to end non-competes, Gabor says. The proposal from the FTC would have a similar national effect as the California law by prohibiting “employers from entering into non-compete clauses with workers” and requiring “employers to rescind existing non-compete clauses.”

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