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California's Expanded Non-Compete Ban Has National Reach

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Tens of thousands of financial advisors working in California should gain extra protection from the burden of non-compete agreements with the state's recent expansion of a 2017 ban on most non-compete contracts. These agreements, meant to restrict workers from seeking employment

with a competitor or starting a competing business, can help companies protect confidential information but lead to less job mobility and lower wages for workers.

Effective on January 1, employers in and outside of California are now prohibited from entering into non-competition agreements with California employees that would be void under California law. The protection applies to agreements signed in and outside of California and to current and former employees.

Notices Required

Applicable to all industries from finance to technology, the new California law will likely impact the financial advisory business around the country. That's because it applies to non-compete agreements entered into in any state, either when an employee works in California or the company aims to enforce the agreement in California.

"There are instances in which an employee is hired in one state and then moves to California. That will impact the enforceability of the non-competition agreement," says David Gabor, a partner with the Wagner Law Group in Boston, Mass.

Managers of financial advisory firms have until February 14 to send individual notices to current employees that signed a non-compete agreement that is void under California law. The notice must be sent by hard copy and email.

Existing Non-Competes Now Void

Notices must also be sent to former employees who signed a non-compete agreement that is void under California law and still within the restrictive period — for example, if the agreement had a 12-month restrictive period and the employee's employment ended six months ago. If enforceable, that employee would not be able to work for a competitor for six more months.

"From the perspective of the employer, it is necessary to notify employees who have non-compete agreements that are now void," says Gabor. "Employers will have to consider ways to communicate with the employees and to determine what, if anything, they can do to protect their business interests."

More Freedom for Advisors

The U.S. Bureau of Labor Statistics estimates there were 32,670 personal financial advisors in California as of May 2022, according to figures released in April 2023. According to CFP.net, as of Feb. 1, 2024, there were 10,212 Certified Financial Planners in California.

Yet the tougher law will envelop financial advisory professionals and firms outside the borders of the Golden State. "It will be interesting to monitor cases arising out of agreements entered into outside of California," Gabor says. For example, if a financial advisor signed a contract with Company A in New Mexico that included a non-compete provision and then took a new job with Company B, which is based in California.

"A-Co sends a cease-and-desist letter to B-Co. B-Co maintains that the efforts to enforce the non-compete violate California law," Gabor says. "We will need to see how the courts treat this legislation.

"The treatment of most non-compete agreements as void will enable financial advisors to have more freedom to change jobs," he says. "Protection expands to employees who relocate to California, as well as employees who signed agreements while working in California. "

Three Exceptions

The California law includes three exceptions: non-competition agreements that are entered into in connection with the sale of goodwill, ownership interest in the business, or sale of the business or its assets; non-compete provisions that are entered into as part of the dissolution of a partnership or when a partner severs the relationship with the partnership; and non-compete provisions that are a part of the dissolution of, or the termination of, a member's interest in, a limited liability company.

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Gabor says the distinction between typical non-compete language and these exceptions is that the consideration for the non-compete provision is tied to something other then continued employment. For example, if a financial advisor sold his or her firm, which included the book of clients, and he or she could not carry out business with those clients.

Gabor expects litigation will emerge in California around enforcement of the legislation. He notes there has been a national trend towards limiting the enforcement of non-compete agreements, including by the Federal Trade Commission and the National Labor Relations Board. Both agencies have challenged the viability of these pacts.

The Financial Planning Association of California Council did not return requests by press time for comments on the new law.

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