New California Non-Compete Law Prohibits Almost All Non-Compete Agreements and Requires Notice to Certain Current and Former Employees by February 14

February 6, 2024 | Articles

California has long taken an extremely strong position against non-compete agreements, but new laws which took effect January 1, 2024 make that prohibition even stronger and impact employers nationwide who have any employees in California.

California now expressly prohibits any non-compete agreement or clause that does not fall within a handful of very narrow exceptions. The prohibition applies no matter how narrowly the non-compete is tailored, no matter how compelling the business interests sought to be protected, regardless of whether the employer has a physical presence in California, and regardless of where the employee lived when the agreement was signed. For example, let's say that a Massachusetts employer hires a Massachusetts employee, they sign a non-compete agreement that is enforceable under Massachusetts law, and the employee then moves to California and joins a direct competitor. In that scenario, California would prohibit enforcement of the non-compete, and even attempting to enforce it could subject the employer to a lawsuit by the former employee for injunctive relief, damages, and attorneys' fees.

One particularly burdensome provision of the new law has an extremely short deadline for compliance. By February 14, 2024, employers must: (1) identify all current and former employees, since January 1, 2022, who have non-compete agreements or clauses that are unenforceable under California law; and (2) send a written notice to each such employee, at both their last known physical address and email address, advising them that their non-compete agreement or clause is void. Failure to comply will be deemed an unfair business practice and may subject the employer to civil penalties.

Unfortunately, the new statute is not a model of clarity. For example, it is



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reasonably clear that the written notices described above must be sent to current and former employees who are now living or working in California, but whether the notice must be sent to any other employees – for example, employees who at one time worked in California but have since left the state – is an open question. It also is unclear if "non-compete" is limited to agreements and clauses that expressly prohibit competition, or if non-solicitation agreements and other types of restrictive covenants are covered, as well.

If you would like any assistance in determining whether you are impacted by these new developments and, if so, how to proceed, please contact any of the attorneys within the Labor, Employment & Employee Benefits Group.

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