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INSIGHT · EMPLOYMENT LAW

California Non-Competes After AB 1076 and SB 699: Void at Home, Contested Across State Lines

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Senate Bill 699 and Assembly Bill 1076 both took effect on January 1, 2024.

California's rule against employee non-competes predates the 2023 legislation, but Assembly Bill 1076 and Senate Bill 699 added a codified reading of the rule, a notice duty, and private remedies. This memorandum states what the statutes now provide, what the courts have held, and where the reach of the statutes remains unsettled.

I. Question Presented

What do Business and Professions Code sections 16600, 16600.1, and 16600.5 require as of November 2026, and how far do they reach non-compete agreements signed or performed outside California?

II. Short Answer

Outside the sale-of-business and dissolution exceptions, an employee non-compete is void in California, however narrowly drawn. Employers had to notify affected current and recent former employees by February 14, 2024. Section 16600.5 declares a void contract unenforceable "regardless of where and when the contract was signed," bars attempts to enforce it, and gives employees a private action with mandatory fees to a prevailing employee. Those provisions govern in California tribunals. **They do not bind courts of other states**, and the First Circuit has affirmed a preliminary injunction enforcing a non-compete under Massachusetts law against an employee who moved to California. No federal non-compete rule is in effect.

III. Governing Law

A. Section 16600

"Except as provided in this chapter, every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void." (Bus. & Prof. Code, § 16600, subd. (a).) AB 1076 (Stats. 2023, ch. 828) added subdivision (b). It directs that the section be read broadly, in accordance with *Edwards*, "to void the application of any noncompete agreement in an employment context, or any noncompete clause in an employment contract, no matter how narrowly tailored," that does not fit an exception. The Legislature declared subdivision (b) declaratory of existing law. Subdivision (c) provides that the section is not limited to contracts to which the restrained person is a party.

B. Section 16600.1: Prohibition and Notice

AB 1076 also added section 16600.1. It is unlawful to include a non-compete clause in an employment contract, or to require an employee to enter a non-compete agreement, that does not satisfy an exception. (Bus. & Prof. Code, § 16600.1, subd. (a).) For current employees, and former employees employed after January 1, 2022, whose contracts contained such a clause, the employer had to give notice by February 14, 2024 that the clause is void. The notice had to be a written, individualized communication delivered to the last known address and the email address. (*Id.*, subd. (b).) A violation is an act of unfair competition under section 17200. (*Id.*, subd. (c).)

C. Section 16600.5: Reach and Remedies

SB 699 (Stats. 2023, ch. 157) added section 16600.5, effective January 1, 2024. (Bus. & Prof. Code, § 16600.5.)

- A contract void under the chapter "is unenforceable regardless of where and when the contract was signed." (Subd. (a).)
- An employer or former employer "shall not attempt to enforce" such a contract, "regardless of whether the contract was signed and the employment was maintained outside of California." (Subd. (b).)
- An employer shall not enter into a contract containing a void provision. (Subd. (c).)
- Entering into or attempting to enforce a void contract is a civil violation. (Subd. (d).)
- An employee, former employee, or prospective employee may sue for injunctive relief, actual damages, or both. A prevailing employee "shall be entitled to recover reasonable attorney's fees and costs." (Subd. (e).)

D. Statutory Exceptions

The chapter permits covenants by a person selling the goodwill of a business, or an owner selling all of its ownership interest or substantially all operating assets with goodwill (§ 16601); by a partner on dissolution or dissociation (§ 16602); and by a limited liability company member on dissolution or termination of interest (§ 16602.5). Each is limited to a specified geographic area where the business was carried on.

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IV. Analysis

A. Edwards and the Rejection of a Reasonableness Test

In *Edwards v. Arthur Andersen LLP* (2008) 44 Cal.4th 937, an accounting firm's agreement barred an accountant, for 18 months, from serving clients he had worked with and, for a year, from serving clients of the Los Angeles office. The Supreme Court held the agreement invalid. It rejected the Ninth Circuit's "narrow-restraint" exception. Section 16600 is "unambiguous." Had the Legislature meant to reach only unreasonable restraints, "it could have included language to that effect." (*Id.* at p. 950.) The holding: "Noncompetition agreements are invalid under section 16600 in California, even if narrowly drawn, unless they fall within the applicable statutory exceptions of section 16601, 16602, or 16602.5." (*Id.* at p. 955.) *Edwards* expressly did not address the so-called trade secret exception or the agreement's ban on recruiting Andersen employees. (*Id.* at p. 946, fn. 4.)

B. Employee Non-Solicitation Clauses

AMN Healthcare, Inc. v. Aya Healthcare Services, Inc. (2018) 28 Cal.App.5th 923 took up the question *Edwards* reserved. The individual defendants were travel-nurse recruiters. Their agreement barred them from soliciting AMN's travel nurses after leaving. The court stated that it "doubt[ed] the continuing viability" of a 1985 Court of Appeal decision that had applied a reasonableness standard to an executive's covenant not to raid employees. (*AMN*, at p. 939.) It also rested on a narrower ground. For recruiters whose occupation is recruiting and placing nurses, the clause restrained them from engaging in their profession, and so was void. (*Ibid.*) The holding is tied to those facts. It does not hold every employee non-solicitation clause void in every setting.

C. Out-of-State Contracts: What Section 16600.5 Does and Does Not Do

Section 16600.5 speaks to enforceability "regardless of where and when the contract was signed." It regulates employer conduct, including attempts to enforce, and supplies a California cause of action. It does not, and cannot by its own force, require a court in another state to disregard that state's law or the parties' choice of law.

DraftKings Inc. v. Hermalyn, 118 F.4th 416 (1st Cir. 2024), illustrates the limit. A DraftKings executive who had worked from New Jersey and New York, and traveled to the Massachusetts headquarters, left for a competitor and moved to California. The district court preliminarily enjoined him, and the injunction reached California. Applying Massachusetts choice-of-law rules, the First Circuit affirmed. It held he had not shown that California had a "materially greater interest" than Massachusetts. The court noted the district court's findings that he did no work for DraftKings from California and that the harm would be felt in Massachusetts. It treated Massachusetts's 2018 non-compete statute as reflecting a considered policy. In a footnote, the court stated that "[t]he drafting committee for these statutes" (the California statutes effective in 2024) conceded that, while they "express[ed] California's strong desire to enforce its public policy," they "cannot dictate to courts outside of its jurisdiction."

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The open questions are therefore practical. First, which forum hears the dispute first. Second, whether a California court will enjoin, or award damages and fees for, an out-of-state enforcement effort under subdivisions (b) and (e). Third, whether challenges to section 16600.5 under the federal Constitution will succeed. As of November 2026, no published California appellate decision resolving the statute's extraterritorial reach or its constitutionality was located.

D. Federal Law

The FTC's Non-Compete Clause Rule never took effect. In *Ryan LLC v. FTC*, No. 3:24-CV-00986-E (N.D. Tex. Aug. 20, 2024), the court entered final judgment setting aside the rule, 16 C.F.R. §§ 910.1–910.6, and ordered that it "shall not be enforced or otherwise take effect on September 4, 2024, or thereafter." On September 5, 2025, the Commission voted 3–1 to dismiss its appeals in the Fifth and Eleventh Circuits and accede to vacatur. (FTC Press Release (Sept. 5, 2025).) California law therefore governs without a federal overlay.

V. Practical Considerations

- **Audit legacy agreements.** Section 16600.1's notice deadline has passed. Its prohibition on including non-compete clauses continues, and violations are actionable under section 17200.
- **Exposure to fees.** A demand letter or out-of-state suit to enforce a void clause can be an "attempt to enforce" under section 16600.5, subdivision (b), with mandatory fees to a prevailing employee.
- **Forum and choice-of-law clauses.** For employees who primarily reside and work in California, Labor Code section 925 may allow the employee to void out-of-state forum and choice-of-law clauses. Where it does not apply, *DraftKings* shows the clause may control elsewhere.
- **Non-solicitation clauses.** After *AMN*, clauses restraining employees whose work is recruiting are void. Other settings require case-specific analysis.
- **Repayment terms.** Separately, section 16608 makes it unlawful, for contracts entered into on or after January 1, 2027, to include in an employment contract, or require a worker to sign as a condition of employment, a term requiring payment of a debt, penalty, fee, or cost after employment ends, subject to listed exceptions. Section 16608 and Labor Code section 926 were added by Statutes 2025, chapter 703 (Assem. Bill No. 692). Statutes 2026, chapter 889 (Assem. Bill No. 1697), an urgency statute effective September 30, 2026, moved the start date from January 1, 2026 to January 1, 2027 and made section 926 inoperative for calendar year 2026. (Bus. & Prof. Code, § 16608, subd. (b)(1); see Lab. Code, § 926.)

VI. Authorities Cited

- Bus. & Prof. Code, § 16600
- Bus. & Prof. Code, § 16600.1
- Bus. & Prof. Code, § 16600.5
- Bus. & Prof. Code, § 16601

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- Bus. & Prof. Code, § 16602
- Bus. & Prof. Code, § 16602.5
- Bus. & Prof. Code, § 16608
- Lab. Code, § 926
- Lab. Code, § 925
- Bus. & Prof. Code, § 17200
- *Edwards v. Arthur Andersen LLP* (2008) 44 Cal.4th 937
- *AMN Healthcare, Inc. v. Aya Healthcare Services, Inc.* (2018) 28 Cal.App.5th 923
- *DraftKings Inc. v. Hermalyn*, 118 F.4th 416 (1st Cir. 2024)
- *Ryan LLC v. FTC*, No. 3:24-CV-00986-E (N.D. Tex. Aug. 20, 2024) (final judgment)
- Federal Trade Commission, Press Release, Federal Trade Commission Files to Accede to Vacatur of Non-Compete Clause Rule (Sept. 5, 2025)

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