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INSIGHT · EMPLOYMENT LAW

Q2 2025 Legal Review: California SB 699 in Practice — Defending Multi-State Employee Mobility

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California Business & Professions Code § 16600.5 (SB 699) provides affirmative employee causes of action, fee-shifting, and extraterritorial protection against foreign non-competes.

During the second quarter of 2025, California courts witnessed a surge in litigation testing the reach of Senate Bill 699 (codified as Business & Professions Code § 16600.5). By creating a private right of action, mandatory attorney's fee shifting, and voiding out-of-state non-competes as to California employment, SB 699 cemented California's status as a jurisdictional sanctuary for executive and technical talent.

I. The Extraterritorial Reach of Section 16600.5

Under Business & Professions Code § 16600.5(a), any contract that is void under § 16600 is unenforceable regardless of where and when the contract was signed. Section 16600.5(b) goes further, making it an actionable civil wrong for an employer to attempt to enforce a void non-compete against an employee working in California.

The statute provides prevailing employees and prospective employers with mandatory attorney's fees and costs (§ 16600.5(e)), converting non-compete disputes from defensive procedural skirmishes into affirmative, high-risk litigation for out-of-state employers.

II. The Interplay with Labor Code § 925 and Federal Injunctions

When out-of-state employers attempt to circumvent California law by filing first in foreign jurisdictions (like Delaware, Texas, or New York) pursuant to forum selection clauses, California employees utilize Labor Code § 925 and § 16600.5 to void the forum selection clause and seek anti-suit injunctions in California Superior Court.

Federal district courts in California have increasingly held that California's fundamental public policy in favor of employee mobility outweighs foreign state contractual preferences, refusing to transfer venue under 28 U.S.C. § 1404(a) when doing so would enforce a covenant void under California law.

III. Practical Hiring & Defense Playbook

For California employers recruiting multistate talent and executive litigators, SB 699 provides powerful tactical tools:

- **Pre-Hiring Review:** Before onboarding candidates bound by out-of-state non-competes, counsel should confirm that the employee will be based in California and issue formal notice under § 16600.5.
- **Affirmative Declaratory Relief:** California employers can initiate immediate declaratory relief actions under CCP § 1060 and B&P Code § 16600.5, seeking an early judgment voiding foreign covenants and securing statutory fee-shifting.
- **Trade Secret Guardrails:** Onboarding must enforce clean-room protocols, ensuring incoming personnel do not use or transfer confidential information or trade secrets from former employers.

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