Cooley

Immediate Obligations for Employers With Noncompete, Customer Nonsolicitation Provisions for California Employees

January 18, 2024

A new California law, Assembly Bill 1076, requires employers to provide notice to certain current and former employees **by February 14, 2024**, if their employment agreements contain provisions unenforceable under California law. Employers with California employees should promptly take steps to assess whether any of their California employees need to be sent notice required under AB 1076, as described below.

AB 1076

Signed by Gov. Gavin Newsom on October 13, 2023, and effective January 1, 2024, AB 1076 amends Section 16600 of the state's Business and Professions Code 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." The law provides that Section 16600 should be "read broadly," and, as such, its reach is not limited to noncompete provisions, but also includes customer nonsolicitation provisions and similar provisions unenforceable under California law.

Specifically, **AB 1076 requires employers to send a notice to current and former employees for whom all of these conditions apply:**

- They were employed by the company after January 1, 2022.
- They are located in California.
- They signed an employment agreement containing a noncompete provision, customer nonsolicitation provision or other similar provision that is unenforceable under California law.

The notice must inform employees that the provisions are void in California. This requirement applies even if the provision was enforceable in another state at the time it was executed, such as in the case where an employee signed an enforceable noncompete agreement in New York and has since relocated to California without signing a new agreement compliant with California law. The notice, which must be **completed by February 14, 2024**, must be written **and** delivered to the employee's last known postal address and email address. Failing to provide such notice constitutes a violation of the state's Unfair Competition Law, which carries civil penalties.

Next steps

Employers with California employees should immediately review any applicable agreements signed by those employees, including any employee who may have relocated to the state after signing an enforceable agreement outside of California. Cooley clients who may be affected by this law should consult with a member of Cooley's employment team or reach out to their primary contact at Cooley to determine whether any of their employees need to receive notice and, if so, to draft a compliant notice for affected employees.

This content is provided for general informational purposes only, and your access or use of the content does not create an attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or any other affiliated practice or entity (collectively referred to as "Cooley"). By accessing this content, you agree that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction, and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty

to keep any information you provide to us confidential. When advising companies, our attorney-client relationship is with the company, not with any individual. This content may have been generated with the assistance of artificial intelligence (AI) in accordance with our AI Principles, may be considered Attorney Advertising and is subject to our legal notices.

Key Contacts

Selin Akkan **Palo Alto**	**sakkan@cooley.com** **+1 650 843 5076**
Wendy Brenner Palo Alto	brennerwj@cooley.com +1 650 843 5371
Leslie Cancel San Francisco	lcancel@cooley.com +1 415 693 2175
Ross Eberly Santa Monica	reberly@cooley.com +1 310 883 6415
Eileen Leman Los Angeles	eleman@cooley.com +1 213 561 3216
Helen Luu Palo Alto	hluu@cooley.com +1 650 843 5789
Joshua Mates San Francisco	jmates@cooley.com +1 415 693 2084
Donna C. Saadati-Soto Los Angeles	dsaadatisoto@cooley.com +1 213 561 3220
Laura Terlouw San Francisco	lterlouw@cooley.com +1 415 693 2069

This information is a general description of the law; it is not intended to provide specific legal advice nor is it intended to create an attorney-client relationship with Cooley LLP. Before taking any action on this information you should seek professional counsel.

Copyright © 2023 Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304; Cooley (UK) LLP, 22 Bishopsgate, London, UK EC2N 4BQ. Permission is granted to make and redistribute, without charge, copies of this entire document provided that such copies are complete and unaltered and identify Cooley LLP as the author. All other

rights reserved.