

February 20, 2024

**Re: Client Alert: AB 1076, Non-Compete Disclosures**

The purpose of this writing is to remind all California employers that they have a duty to notify former and current employees of unenforceable non-compete language. The deadline for this notice was February 14, 2024. Klinedinst PC is sending this reminder of this obligation. California has taken a further step to express its disdain for non-compete agreements. California passed Assembly Bill (“AB”) 1076 which places further restrictions on the use of non-compete clauses in California employment contracts. AB 1076 is effective January 1, 2024, and applies to current or former employees employed after January 2022. AB 1076 requires employers to provide notice to former and current employees if their employment agreements contain provisions unenforceable pursuant to California law. This notice was to be sent by February 14, 2024. If your company did not timely send out the AB1076 notice, please contact our office to discuss a compliance strategy.

There are at least two follow-up items related to AB 1076, the first which requires immediate attention: (1) By February 14, 2024, California employers must send an "individualized notice" to all current and former California-based employees at their last known physical address and e-mail address notifying them that restrictive covenants, if any, in their agreements are void; and, (2) California employers should obtain counseling related to any current and going-forward employer-employee documentation to ensure it does not conflict with California's non-compete laws, including AB 1076.

AB 1076 requires employers to send notice to former and current employees if the following three conditions apply:

1. The employees were employed after January 1, 2022;
2. The Employees were located in California; and,
3. They signed an employment agreement that contained a non-compete provision, or other similar terms that are unenforceable under California law.

AB 1076 requires California employers to notify employees that non-compete language in any employment agreement that they signed is void. Employers may want to take the notification as an opportunity to highlight that other provisions of those agreements (e.g., affirmative confidentiality provisions) remain enforceable. For instance, frequently these non-compete provisions are accompanied by covenants regarding the duty to refrain from disclosing or using trade secret, confidential or proprietary information and the employer may want to make clear that, while the non-compete restrictions are void and will not be enforced, the other lawful provisions remain viable and will be enforced.

Additionally, it is important to emphasize that non-compete language cannot be used in employment contracts in California and that continued use of such language exposes the company to litigation and potentially to damages, penalties and/or attorney fees and costs. Accordingly, you should review your employment documents and remove any restrictive non-compete covenants from those documents as soon as possible.

**Penalties:**

Pursuant to AB 1076, failure to provide the requisite notice subjects employers to a penalty of \$2,500 for each violation and potential exposure to attorneys' fees. Further, a violation of AB 1076 constitutes unfair competition which will likely be a basis for civil litigation adverse to a non-compliant employer.

**Next Steps:**

Attorneys at Klinedinst are prepared to conduct an immediate audit of employment documents used from January 1, 2022, and to determine if notice is required.

**Contact our Employment Counseling and Litigation Team:**

In addition to immediate issues related to AB 1076, Klinedinst's employment team is ready to address related compliance issues, including SB 699, which makes any contract that is void under Business and Professions Code section 16600 unenforceable "regardless of where and when the contract was signed". While SB 699 does not displace choice-of-law analysis, out-of-state employers are encouraged to evaluate California-specific compliance with their onboarding documentation and employment agreements. Further, and for all employers, counsel should be sought to determine if non-solicitation provisions in employment agreements also fall under the purview of California's non-compete legal framework.

The Klinedinst team is prepared to answer any questions related to this reminder update.

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