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By Valentine's Day, Employers Must Provide Notice to California Employees Subject to Noncompete Provisions

California generally bans noncompete provisions, subject to limited sale of business and other exceptions. However, recently California passed two related pieces of legislation, attempting to further crack down on employers' efforts to enforce noncompete provisions against California-based employees.

First, Senate Bill 699 amended the California noncompete statute to clarify that noncompete provisions signed by employees in other states (even in agreements expressly governed by other states' laws) may not be enforced against employees who later move to and live in California at the time of enforcement. The bill also provides additional damages remedies to employees in the event employers attempt to enforce noncompete provisions in court.

Second, Assembly Bill 1076 requires employers to provide California-based employees who signed noncompete provisions with a notice by February 14, 2024, stating that their noncompete provisions are void. Specifics regarding the notice requirement are as follows:

1. The notice must be provided to all current California-based employees, as well as to any California-based former employees who left the company after January 1, 2022.
2. The notice must be provided by email and regular mail, to the last-known addresses of the employees.
3. The statute does not provide details, nor is there guidance yet from California agencies or courts, on the substance of the notice, except that the notice must inform the employee that the noncompete provision is void.
4. While not crystal clear, it appears that employers must also provide the notice to employees who signed customer nonsolicit provisions.
5. Employees who have only signed typical confidentiality and/or assignment of inventions provisions in California need not receive the notice. Also, if a noncompete or nonsolicit provision applies only during employment, and does not apply following termination of employment, the notice need not be provided.
6. Failure to comply with the notice requirement subjects employers to potential penalties of up to $2500 per violation.

Employers should audit the agreements in place with any California-based employees they currently engage or have engaged since January 1, 2022, to determine whether they have signed provisions that require this notice. Employers should be mindful that noncompete and nonsolicit provisions may be found in equity, bonus, partnership, LLC, and other agreements. If California-based employees signed such agreements, they must also receive the notice.

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