



# Do's and Don'ts For CA Employment Agreements

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# Non-Compete Agreements

# Non-Compete Agreements: **Old Law**

- In 1941, California enacted a law that prohibited non-compete agreements.
- **Bus. & Prof. Code §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.”

# Non-Compete Agreements: **Old Law**

- Originally interpreted as permitting a “narrow restraint” such as a geographical or time limit.
- In 2008, the California Supreme Court eliminated the “narrow restraint” exception.
- The only two exceptions permitting a non-compete agreement are for the sale of a business or the dissolution of, or dissociation from, a partnership.

# Non-Compete Agreements: **Old Law**

- Despite this statute, employers still routinely had employees enter these void non-compete agreements hoping for self-executing enforcement by both employees and subsequent employers.
- In 2010, the California Supreme Court found that an employer who honored a prospective employee's non-compete agreement with a prior employer was liable for wrongful termination.

# Non-Compete Agreements

## New Law: 2024 Revisions

- Assembly Bill 1076, effective January 1, 2024
- Amended **Bus. & Prof. Code §16600** to codify the court's interpretation, eliminating the “narrow restraint” exception.
- “This section shall be read broadly, in accordance with *Edwards v. Arthur Andersen LLP* (2008) 44 Cal.4th 937, 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 satisfy an exception in this chapter.”

# Non-Compete Agreements

## New Law: 2024 Revisions

- Assembly Bill 1076, effective January 1, 2024
- **Added**: “This section shall not be limited to contracts where the person being restrained from engaging in a lawful profession, trade, or business is a party to the contract.”
  - Includes prospective and subsequent employers and prohibits “no-hire” and cooperation agreements between employers.

# Non-Compete Agreements

## New Law: 2024 Revisions

- Assembly Bill 1076, effective January 1, 2024
- Added: Bus. & Prof. Code §16600.1:
  - Makes it unlawful to include a non-compete in an employment contract or require an employee to enter into a non-compete agreement.
  - Requires employers to give notice to employees who have signed a non-compete that the non-compete agreement or clause is void.
  - Violation is a violation of Bus. & Prof. Code §17200, the **Unfair Competition Law**.



# Non-Compete Agreements

## New Law: 2024 Revisions

**AND:** Senate Bill 699, effective January 1, 2024

Added: **Bus. & Prof. Code §16600.5:**

- a) Any contract that is void under this chapter is unenforceable regardless of where and when the contract was signed.

So even non-compete agreements that are valid in other states are void in California.



# Non-Compete Agreements **New Law: 2024 Revisions**

**AND:** Senate Bill 699, effective January 1, 2024

Added: **Bus. & Prof. Code §16600.5:**

- b) An employer or former employer shall not attempt to enforce a contract that is void under this chapter regardless of whether the contract was signed and the employment was maintained outside of California.



# Non-Compete Agreements

## **New Law: 2024 Revisions**

**AND:** Senate Bill 699, effective January 1, 2024

Added: **Bus. & Prof. Code §16600.5:**

- c) An employer shall not enter into a contract with an employee or prospective employee that includes a provision that is void under this chapter.



# Non-Compete Agreements

## **New Law: 2024 Revisions**

**AND:** Senate Bill 699, effective January 1, 2024

Added: **Bus. & Prof. Code §16600.5:**

- d) An employer that enters into a contract that is void under this chapter or attempts to enforce a contract that is void under this chapter commits a civil violation.

# Non-Compete Agreements

## New Law: 2024 Revisions

**AND:** Senate Bill 699, effective January 1, 2024

Added: Bus. & Prof. Code §16600.5:

- e) (1) An employee, former employee, or prospective employee may bring a ***private action*** to enforce this chapter for injunctive relief or the recovery of ***actual damages, or both***. (2) In addition to the remedies described in paragraph (1), a prevailing employee, former employee, or prospective employee in an action based on a violation of this chapter shall be entitled to recover reasonable ***attorney's fees and costs***.

# Non-Compete Agreements

## New Law: 2024 Revisions

### *Federal Law: FTC Announced Rule Banning Non-competes*

16 CFR Part 910, was scheduled to be effective September 4, 2024

- Ban on new non-competes with a “worker” (including, e.g., employees and independent contractors), including senior executives
  - **Exception:** The Final Rule does not apply to non-competes entered by a person pursuant to a bona fide sale of a business entity.
- For existing non-competes:
  - For senior executives, existing non-competes can remain in force
  - For all other workers, existing non-competes are not enforceable after effective date
  - Employers must provide notice to workers bound to an existing noncompete that it will not be enforced against them in the future.



# Non-Compete Agreements

## New Law: 2024 Revisions

***Federal Law:*** 16 CFR Part 910, effective September 4, 2024 purported to create a rule banning non-compete agreements. However, a district court set aside the FTC's non-compete ban in August 2024.

Although the FTC initially took steps to appeal the district court's decision, it dismissed its appeal in September 2025.

**Bottom Line:** There is no current federal ban on non-competes but could change again with the next administration.



# Non-Compete Agreements

## Conclusion

***Non-Compete Agreements in California are void, unenforceable and illegal.***

Employers are liable for damages if they enter into a non-compete agreement with an employee or if they enforce a non-compete agreement.

The good news is that employers can still protect their trade secrets under both state and federal **Trade Secret** laws.

- Employers can sue employees and their subsequent employers for misappropriation of trade secrets.
- Employers should have confidentiality agreements and policies to protect trade secrets and unfair competition.

# Non-Solicitation Agreements

# Non-Solicitation Agreements: **Old Law**

**Bus. & Prof. Code §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.”

Courts have found that this law applies to agreements prohibiting “soliciting or recruiting, or causing others to solicit or induce, any employee” of employer.

# Non-Solicitation Agreements: **Old Law**

***But*** narrowly drawn anti-solicitation provisions (e.g., anti-raiding provision by executive) have been upheld.

Non-solicitation agreements have usually been found to be void under B&P 16600 unless (1) uses unfair or deceptive means to solicit employees (e.g., trade secrets); and (2) the soliciting employee held fiduciary role with former employer.

# Non-Solicitation Agreements: **New Law**

***Do AB 1076 and/or SB 699 affect non-solicitation agreements?***

Probably

**Bus. & Prof. Code §16600(b)(1):** “This section shall be read broadly...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 satisfy an exception in this chapter.”

# New Ban On Stay-Or-Pay Provisions

# Stay-Or-Pay Provisions: **New Law**

## **Assembly Bill 692, effective January 1, 2026**

Created **Bus. & Prof. Code §16608** and **Labor Code §926** to broadly prohibit most “stay-or-pay” provisions in employment contracts.

- Debt Repayment Upon Termination;
- Collection or Forbearance Provisions; or
- Penalties, Fees, or Costs.

Violations of AB 692 will be void as an unlawful restraint and give rise to a private right of action amounting to \$5,000 per affected worker, in addition to injunctive relief and recovery of attorneys’ fees and costs.

# Stay-Or-Pay Provisions: **New Law**

**Assembly Bill 692, effective January 1, 2026**

The law targets employers who seek to claw back offer incentives or retention bonuses if the worker leaves before a specified date.

Similarly, the law also targets training repayment programs (“TRAPs”) which require workers to reimburse employers for costs associated with work-related training, education, relocation and other expenses if they leave before a specified date.

# Stay-Or-Pay Provisions: **New Law**

**Assembly Bill 692, effective January 1, 2026**

## **EXCEPTIONS:**

- Loan repayment programs by federal, state and local government agencies;
- Contracts related to enrollment in an apprenticeship program approved by the Division of Apprenticeship Standards;
- Contracts relating to the lease, financing or purchase of residential property;
- Repayment for the cost of tuition for a transferable education credential;
- Contracts for discretionary or unearned monetary payments “at the outset of employment that is not tied to specific job performance” in certain circumstances (i.e. signing bonuses); and separate from the primary employment agreement.

# Confidentiality/ Non-Disparagement/ Non-Disclosure of Terms & Conditions

# SB 820: The STAND Act

- In 2018 California passed SB 820 (Stand Together Against Non-Disclosures (STAND) Act) in the wake of the #metoo movement.
  - Added Code of Civil Procedure Section 1001.
  - Prohibited confidentiality provisions in settlement agreements involving claims of sexual assault, sexual harassment, and sex discrimination.

# SB 1300: (2018)

- Added Government Code §12964.5, which made it unlawful for an employer, in exchange for a raise or bonus, or as a condition of employment or continuing employment, to:
  - a) require employees to sign a release of claim or right under the FEHA, or
  - b) to require employees to sign a non-disparagement agreement that gags employees from disclosing information about sexual harassment and other unlawful acts.

# SB 331: Silenced No More Act

- In 2021 California passed SB 331 (the “Silenced No More Act”) to expand the list of claims subject to the non-disclosure prohibition.
  - Prohibits non-disclosure provisions for claims of assault, harassment, or discrimination *based on any protected characteristic*.
  - Specific requirements for release, non-disparagement, confidentiality, separation, and settlement agreements.



# Employee Policies: ***Stericycle***

*Stericycle, Inc.*, 372 NLRB No. 113 (2023)

Provided a new standard to determine whether employer policies unlawfully restrict employees' exercise of concerted activity.

To challenge a policy, the General Counsel need only show that the rule has a “reasonable tendency to chill” employees from exercising their right to concerted activity.

Employer must the prove “that it advances legitimate and substantial business interests that cannot be achieved by a more narrowly tailored rule.”



# Waiving Right to Future Employment

# Code of Civil Procedure §1002.5

- A settlement agreement with an aggrieved employee cannot contain a provision prohibiting future employment, unless:
  - The employer has made and ***documented*** a good faith determination, before the aggrieved person filed the claim, that the aggrieved person engaged in sexual harassment, sexual assault, or any criminal conduct; or
  - There is a legitimate non-discriminatory or non-retaliatory reason for terminating the employee or refusing to rehire the person.

# Bus. & Prof. Code §16600

- Also, a “no rehire” provision in a settlement agreement may violate **Bus. & Prof. C. § 16600** by restricting the employee’s right to engage in a profession, trade, or business.
- Changes to **Section 16600** might strengthen this prohibition.

# Bottom Line for Agreements

# Confidentiality or Non-Disparagement Agreements

- **Don't** prohibit disclosure of assault, harassment, or discrimination based on any protected classification in the workplace.
- **Don't** include any provision that prohibits an employee from disclosing information about any type of harassment or discrimination or other conduct that an employee reasonably believes is unlawful in the workplace unless the agreement includes the following carve-out language in substantial form:
  - “Nothing in this agreement prevents you from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that you have reason to believe is unlawful.”
- **Do** include provisions to protect the employer's trade secrets, proprietary information, or other confidential information that does not involve unlawful acts in the workplace.

# Stay-or-Pay Agreements

- **Don't** attempt to pre-condition employment by seeking reimbursement for training costs, tuition assistance, or sign-on and bonuses
- **Don't** attempt to mischaracterize traditional stay-or-pay clauses and agreements as “loans” to avoid AB 692.
- **Do** conduct an audit of your current employment offer letters, retention agreements, policies and trainings; revise these agreements to ensure compliance.
- **Do** ensure that your recruiters, supervisors, and human resource professionals are aware of the prohibition of stay-or-pay provisions.

# Employee Release Agreements

- **Don't** condition a raise, bonus, employment, or continued employment on:
  - A release of FEHA claims.
  - Employee signing a non-disparagement agreement that prohibits disclosure of unlawful acts in the workplace.
- **Note: If you do, the entire agreement is unenforceable.**
- **Do** ask employees to release non-FEHA claims, including wage and hour claims in exchange for a raise or bonus.

# Separation Agreements

- **Don't** include confidentiality provisions applying to substance of claims for any type of workplace harassment or discrimination claims.
- **Don't** include non-disparagement or other provision restricting employee's ability to disclose information relating to conditions in the workplace, unless the following is also included:
  - "Nothing in this agreement prevents you from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that you have reason to believe is unlawful."
- **Must** include notice of employee's right to consult an attorney.
- **Must** allow at least 5 business days to consider the agreement.
- **Do** prohibit disclosure of the amount of the severance payment.

# Settlement Agreements

- **Don't** include confidentiality provisions applying to substance of claims for any type of workplace harassment or discrimination claims.
- **Do** include provisions to protect the claimant's identity at the claimant's request.
- **Don't** include non-disparagement or other provision restricting employee's ability to disclose information relating to conditions in the workplace, unless the following is also included:
  - "Nothing in this agreement prevents you from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that you have reason to believe is unlawful."
- **Do** prohibit disclosure of the terms of the agreement, such as the amount paid in settlement.
- **Don't** include a waiver of future employment

# Questions or Comments?



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