



Nov 06, 2021

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UPDATED California's Ban on Mandatory Employment Arbitration Agreements restored by US Court of Appeals

UPDATE 11/6/21:

The latest development on AB 51 involves the US Chamber of Commerce, which has requested a rehearing with the full 9th Circuit panel in response to the divided panel's ruling. As a result of this effort, the district court's injunction against AB51 enforcement has been reinstated while the Chamber's petition is being considered or pending further action by the trial court.

At a glance:

- California's AB 51 prohibited mandatory employment arbitration agreements and imposed criminal penalties on employers who required it.
- Due to legal challenges, enforcement of the anti-arbitration law was delayed until now, when the 9th Circuit Court lifted its injunction.
- If an employee refuses to sign an arbitration agreement, they cannot be denied a job or terminated.

In October 2019, California enacted AB 51, a new law, that on its surface, prohibits mandatory arbitration clauses in employment contracts. As expected, the law was immediately challenged in federal court. In the latest installment of the law's journey through the courts, a split Ninth Circuit panel vacated a 2020 preliminary injunction that had delayed implementation of the bill.

This is only an interim order, but barring a change in the ruling after trial, California employers will no longer be able to require their existing employees or new hires to sign arbitration agreements.

The new law does NOT affect the enforceability of any agreements already in place, nor does it prohibit employers from asking employees to execute such agreements. However, employers

simply cannot deny an applicant a job or terminate the employment of an existing employee who fails to sign an arbitration agreement.

What's the Takeaway for California Employers?

Employers may ask applicants and existing employees to sign arbitration agreements until the final ruling on the matter is handed down, but they must make it clear that they are not required to do so as a condition of employment and clearly should not deny or terminate employment if an applicant or employee refuses to sign an arbitration agreement. If the 9th circuit does uphold the law, review by the US Supreme Court seems inevitable.

Employers need to be aware of the changing legal landscape surrounding the enforceability of arbitration agreements. If you have any questions about your business's arbitration agreement practices or avoiding potential penalties, please contact Theodore E. Bacon, Raúl F. Salinas, Jonathan M. Werner, or any of AlvaradoSmith's Employment Practice attorneys.

Theodore E. Bacon is a seasoned trial lawyer who advises clients on what they need to know and do to minimize the chances of claims and to maximize the chances for positive results if suits are filed. He has successfully helped clients resolve various disputes, including all types of employment and business-related matters, such as wrongful termination claims, discrimination and harassment claims, wage and hour class actions, and PAGA claims.

Raúl F. Salinas' litigation practice encompasses representing large multi-national corporations, government agencies, and small businesses in state and federal courts involving a variety of disputes, including in particular the defense of employment claims, civil public-integrity prosecutions, and matters involving complex cross-border agreements and regulatory disputes.

Jonathan M. Werner focuses on the full range of HR issues all employers face: resolving problems, like lawsuits and other employment claims; hiring and separating employees, including creating the contracts and agreements that accompany such events; and creating safe workplace environments that comply with all federal and state laws and regulations.

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