

## Federal Judge Extends Order Blocking Implementation of California's New Arbitration Law (AB 51)

February 21, 2020

As reported in a previous [Cooley alert](#), California Governor Gavin Newsom signed a law that was intended to limit the ability of employers to require mandatory arbitration of certain statutory employment claims as of January 1, 2020. However, business groups filed a challenge to this law, arguing in part that it is preempted by federal law under the Federal Arbitration Act, which governs arbitration agreements involving parties engaged in interstate commerce.

Earlier, [we reported that](#) Judge Kimberly Mueller of the US District Court for the Eastern District of California granted an order temporarily preventing AB 51 from taking effect in January 2020.

Judge Mueller has since heard additional arguments regarding whether AB 51 should be allowed to take effect. On January 31, 2020, the court granted a preliminary injunction that further blocks implementation of AB 51 to the extent AB 51 affects employers' and employees' ability to enter into arbitration agreements that are covered by the Federal Arbitration Act. This injunction will remain in effect until the court case is fully resolved.

In a more detailed order issued February 7, 2020, Judge Mueller explained that she had granted the preliminary injunction because the plaintiffs in the case were "likely to succeed on the merits of their claim that AB 51 is preempted by the FAA because it discriminates against arbitration and interferes with the FAA's objectives." She also found there was a likelihood of irreparable harm to California employers if she allowed AB 51 to take effect and the balance of the equities and the public interest weighed in favor of granting the preliminary injunction.

### What does this mean for employers?

The main purpose of AB 51 was to prevent employers from requiring employees to agree to arbitrate claims under the California Fair Employment and Housing Act and the Labor Code. A federal judge has now prevented that portion of AB 51 from taking effect for the foreseeable future, at least with regard to arbitration agreements governed by the Federal Arbitration Act.

This means that, until this lawsuit is resolved, employers are permitted to continue to require arbitration of FEHA claims and Labor Code claims as a condition of employment or continued employment, so long as the agreement to arbitrate is governed by the Federal Arbitration Act.

Please contact us if you would like to discuss this issue or broader issues regarding your employee arbitration agreements.

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