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Federal Judge Temporarily Blocks Implementation of California's New Arbitration Law (AB 51)

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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.

This new law, AB 51, stated employers could no longer require, as a condition of employment, continued employment or the receipt of any employment-related benefit, that a job applicant or employee waive any right, forum or procedure for an alleged violation of the California Fair Employment and Housing Act (which, among other things, prohibits discrimination or harassment based upon a protected classification and prohibits retaliation for engaging in protected activity) or the California Labor Code, including any requirement that an employee either arbitrate such claims or affirmatively opt out of an arbitration agreement or provision. Rather, AB 51 required employees to voluntarily and affirmatively choose to enter into such an arbitration agreement or provision.

We had previously anticipated legal challenges to this state law, including arguments that it is preempted by federal law under the Federal Arbitration Act, which governs arbitration agreements involving parties engaged in interstate commerce. The US Chamber of Commerce and other business groups filed a lawsuit arguing that AB 51 was preempted by the Federal Arbitration Act and should be ruled invalid. On December 30, 2019, Judge Kimberly Mueller of the US District Court for the Eastern District of California granted a temporary restraining order, blocking AB 51 from taking effect until the court's next hearing on January 10, 2020. At that hearing, the court will consider whether to grant a preliminary injunction that would block implementation of AB 51 until the case is fully resolved. We will monitor for further developments and issue another Alert regarding the outcome of that hearing.

What does this mean for employers?

Implementation of AB 51 did not take place as scheduled on January 1, 2020, given the federal court's order. However, we should find out quickly this year whether its implementation will be suspended for a longer period of time. In the interim, employers are permitted to continue to require arbitration of FEHA claims and Labor Code claims as a condition of employment or continued employment. Please contact us if you would like to discuss this issue or broader issues regarding your employee arbitration agreements.

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