

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

January 2, 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.

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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Key Contacts

Selin Akkan Palo Alto	sakkan@cooley.com +1 650 843 5076
Frederick Baron Palo Alto	fbaron@cooley.com +1 650 843 5020
Ann Bevitt London	abevitt@cooley.com +44 (0) 20 7556 4264
Wendy Brenner Palo Alto	brennerwj@cooley.com +1 650 843 5371
Leslie Cancel San Francisco	lcancel@cooley.com +1 415 693 2175
Helenanne Connolly Reston	hconnolly@cooley.com +1 703 456 8685
Joshua Mates San Francisco	jmates@cooley.com +1 415 693 2084
Gerard O'Shea New York	goshea@cooley.com +1 212 479 6704
Bronwyn L. Roberts Boston	broberts@cooley.com +1 617 937 2434
Michael Sheetz Boston	msheetz@cooley.com +1 617 937 2330
Lois Voelz Palo Alto	lvoelz@cooley.com +1 650 843 5058
Summer Wynn San Diego	swynn@cooley.com +1 858 550 6030

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