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TRO Halts New Arbitration Law AB51

Article

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On December 30, 2019, a federal District Court issued a Temporary Restraining Order (TRO) against the State of California temporarily enjoining the State from enforcing Assembly Bill 51 (AB 51) —the new California law prohibiting mandatory arbitration agreements in employment. The TRO will remain in place until a full preliminary injunction hearing can be held on January 10, 2020.¹ As we recently discussed in the [Vedder Price 2020 California Employment Law Roundup](#), AB 51, signed into law on October 10, 2019 and slated to take effect on January 1, 2020, prohibits employers from requiring applicants or employees in California to agree, as a condition of employment, continued employment, or the receipt of any employment-related benefit, to arbitrate claims involving violations of the California Fair Employment and Housing Act (FEHA) or the California Labor Code. AB 51 makes it a criminal misdemeanor for an employer to violate this new law.

On December 9, 2019, the California Chamber of Commerce and several other trade organizations filed a lawsuit in federal District Court seeking to enjoin enforcement of AB 51 on the grounds that it was preempted by the Federal Arbitration Act (FAA). Although AB 51 does not specifically mention “arbitration” — it instead broadly applies to the waiver of “any right, forum, or procedure for a violation of [the FEHA or Labor Code], including the right to file and pursue a civil action...” — it clearly and directly impacts mandatory arbitration agreements. In issuing the TRO temporarily restraining enforcement of AB 51, U.S. District Court Judge Kimberly J. Mueller noted that “serious questions [exist] regarding whether [AB 51] is preempted by the Federal Arbitration Act.”

The U.S. Supreme Court has repeatedly held that the FAA preempts state laws that single out arbitration agreements for disfavored treatment. Courts may invalidate arbitration agreements based on “generally applicable contract defenses” but not legal rules that apply only to arbitration. Judge Mueller cited in her TRO the recent Supreme Court

decision *Kindred Nursing Ctrs. Ltd. P'ship v. Clark*,² holding that the FAA preempts any state rule that facially discriminates against arbitration or that covertly accomplishes the same objective by disfavoring contracts that contain the features of arbitration agreements. Thus, it appears the District Court may follow precedent and issue a preliminary injunction enjoining enforcement of AB 51. We will issue a further update after the hearing on January 10, 2020.

If you have any questions regarding the topics discussed in this article, please contact **Thomas H. Petrides** at +1 (424) 204 7757, **Harrison Thorne** +1 (424) 204 7704 or any Vedder Price attorney with whom you have worked.

¹ See *Chamber of Commerce of U.S., et al. v. Xavier Becerra, et al.*, Case No. 2:19-cv-02456-KJM-DB, Dkt. No. 24 (E.D. Cal. Dec. 30, 2019).

² 137 S.Ct. 1421 (2017)

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