

California Senators Defy Federal Law by Making Employment-Based Arbitration Agreements Optional

2 min read

Sep 11, 2018

On August 22, 2018, California senators passed a bill that prevents employers from forcing employees to sign mandatory arbitration or nondisclosure agreements in order to secure and/or maintain employment. AB 3080 prevents retaliation against workers who choose not to sign mandatory arbitration agreements that would waive their right to pursue legal action under the state's Fair Employment and Housing Act or the California Labor Code in courts. The intent of the bill is not to outlaw arbitration agreements in their entirety, but to provide workers and job applicants with the option to choose the forum in which to air out their grievances. The proposed legislation will now move to the desk of Governor Brown for final approval.

That being said, AB 3080 will certainly be met with resistance due to its stark contrast to federal case law, which favors enforcement of arbitration agreements. Most recently, the Supreme Court in the decision *Epic Systems v. Lewis* held that businesses are not disregarding the National Labor Relations Act by requiring workers to sign class action waivers as part of a mandatory arbitration agreement. The ruling goes on to add that those type of agreements must be enforced according to their terms under the Federal Arbitration Act.

The dichotomy between the proposed bill and federal case law is certainly not lost on the California senators. After all, the Supremacy Clause within Article VI of the U.S. Constitution dictates that federal law is the "supreme law of the land." However, the crafters of AB 3080 has made it clear that the purpose of the bill is to give workers and job applicants the choice to either voluntarily be bound by an employer's arbitration agreement or not.

The legislation was birthed from the #MeToo movement to stop employers from limiting the ability of disclosure in situations where there is workplace sexual harassment or to prevent workers from participating in any harassment or discrimination investigation or proceeding. Only time will tell whether AB 3080, if enacted, will eliminate mandatory workplace arbitration agreements without being challenged on a federal level. In the meantime, employers should understand that, given the current political climate and U.S. Supreme Court makeup, there is a great chance that this bill may end up preempted.

Please contact Tricia Pride or your regular Hinshaw attorney with any questions.

Topics

Arbitration, California, Mandatory Arbitration, Federal, Federal Arbitration Act