

The 12 Days of California Labor and Employment Series – Day 7 “No Automatic Stay Any Further While Pushing for Arbitration”

2 min read

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In the spirit of the season, we are using our annual “12 days of the holidays” blog series to address new California laws and their impact on California employers. On the seventh day of the holidays, my labor and employment attorney gave to me seven swans-a-swimming, and SB 365.

Background of Arbitration Trends in California

Arbitration has been at the forefront of numerous California laws for the last few years, demonstrating a clear trend disfavoring arbitration. SB 365 adds to that trend. As of January 1, 2024, the automatic stay of trial court proceedings after an appeal is filed regarding the granting or denial of a petition to compel arbitration has been eliminated. Going forward, the trial court has discretion on whether a case can and should proceed at the trial court level while an appeal regarding arbitration is pending.



Amendments

Current law provides that a trial court is required to stay proceedings of any claims subject to arbitration when a party appeals the granting or denial of a motion to compel arbitration. With the enactment of SB 365, the Code of Civil Procedure section 1294 will be amended to state that “Notwithstanding Section 916, the perfecting of such

an appeal shall not automatically stay any proceedings in the trial court” when appealing an order denying a motion to compel arbitration.

While California has sought to limit arbitration, federal courts are moving in the opposite direction. There is a recent United States Supreme Court case, *Coinbase, Inc. v. Bielski*, from this year that held that a district court must stay its pretrial and trial proceedings while an appeal is pending. This is the very opposite outcome of what SB 365 will accomplish.

Some may recall the passage of AB 51 in 2019, which prohibited employers from requiring employees to enter into certain arbitration agreements, including agreements to arbitrate claims under California’s Fair Employment and Housing Act and California’s Labor Code. This law was immediately challenged with the argument that AB 51 was preempted by the Federal Arbitration Act (“FAA”). Earlier this year, the Ninth Circuit opined that the FAA did indeed preempt AB 51.

Legal Challenges and Increased Litigation Costs

Similar to AB 51, it is anticipated that SB 365 will be challenged in court, and again, it will be argued that the FAA preempts it.

One of the benefits of arbitration is efficiency. However, SB 365 is likely to create increased litigation costs for employers who will need to proceed with a case at the trial court level only to ultimately end up in arbitration and do it all over again. An employer may be forced to litigate an issue and/or parts of a case at both the trial court and arbitration level if the appeal for arbitration is successful, creating double the costs and time.

Based on SB 365 and the likelihood of legal challenges and uncertainty, employers should review their arbitration agreements and include language noting it is governed by the FAA rather than the California Arbitration Act. This may avoid the stay issue created by SB 365.

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