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Federal Court Preliminary Enjoins Enforcement of New California Arbitration Law AB 51

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On Friday, January 31, 2020, Chief District Judge Kimberly J. Mueller of the federal District Court for the Eastern District of California issued a Preliminary Injunction (PI) against the State of California, enjoining the State from enforcing Assembly Bill 51 (AB 51) with respect to mandatory arbitration agreements in employment to the extent governed by the Federal Arbitration Act (FAA).[1]

As discussed in the Vedder Price employment law alert, *TRO Halts New Arbitration Law AB 51,* the District Court had previously issued a Temporary Restraining Order (TRO) on December 30, 2019 temporarily enjoining enforcement of AB 51 pending a preliminary injunction hearing scheduled for January 10, 2020. The Court subsequently continued the January 10 hearing and extended the TRO until January 31 to allow the parties time to submit supplemental briefing. AB 51, the new California law previously slated to take effect on January 1, 2020, purportedly prohibited 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 did not specifically mention "arbitration" but instead broadly applied 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."

In issuing the PI, the District Court specifically: (a) enjoined the State from enforcing sections 432.6(a), (b), and (c) of the California Labor Code where the alleged "waiver of any right, forum, or procedure" is the entry into an arbitration agreement covered by the FAA[2]; and (b) enjoined the State from enforcing Section 12953 of the California Government Code [FEHA] where the alleged violation of "Section 432.6 of the Labor Code" is entering into an arbitration agreement covered by the FAA.

The PI will remain in place pending a final judgment, which would likely occur following a motion for summary judgment rather than a full trial on the merits since there are no material facts in dispute to be tried. However, pursuant to 28 U.S.C. § 1292(a)(1), an order granting a preliminary injunction is immediately appealable. Accordingly, it is likely that the State of California will file an immediate appeal directly with the 9th Circuit Court of Appeals.

In the interim, based on this PI, employers should feel comfortable in continuing to require employees in California to sign mandatory arbitration agreements as a condition of employment without being subjected to criminal prosecution under AB 51, provided that the arbitration agreement is clearly governed by the FAA. Employers are encouraged to consult with legal counsel to ensure compliance in this regard.

If you have any questions regarding the topics discussed in this article, please contact **Thomas H. Petrides** at +1 (424) 204 7756, **Harrison M. 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. 44 (E.D. Cal. Jan. 31, 2020).

[2] Federal Arbitration Act, 9 U.S.C. §§ 1-16.