

Injunction Permanently Ends Calif. Ban On Forced Arbitration

By Caleb Drickey

Law360 (January 3, 2024, 8:33 PM EST) -- California cannot enforce a law barring employers from insisting that employees sign arbitral agreements as a requirement of ongoing employment after an opinion by the Ninth Circuit cementing that the state law is preempted by the Federal Arbitration Act.



A California federal judge permanently enjoined the state from enforcing A.B. 51, which imposes civil and criminal penalties on employers that prohibit employees from opting out of arbitral agreements. (George Rose/Getty Images)

On Monday, U.S. District Judge Kimberly J. Mueller **permanently enjoined** officers of the Golden State from enforcing Assembly Bill 51, which prohibits employers from requiring current or prospective employees to waive their rights to sue in court, rather than in private arbitration, on pain of termination.

The judge also ordered the state to pay a coalition of pro-business groups led by the U.S. Chamber of Commerce more than \$820,000 to cover the legal fees expended in their challenge to the law.

The order stemmed from a **February decision** by a split Ninth Circuit panel that **A.B. 51**, which imposes civil and criminal penalties on employers that prohibit employees from opting out of arbitral agreements, conflicts with the FAA's intention to facilitate private arbitration of disputes.

Although the law imposes penalties on employers that impose arbitral demands on workers rather than invalidating those contracts, a split panel ruled that the law impermissibly disfavors arbitration.

"The FAA's preemptive scope is not limited to state rules affecting the enforceability of arbitration agreements, but also extends to state rules that discriminate against the formation of arbitration agreements," U.S. Circuit Judge Sandra S. Ikuta wrote in the majority's February opinion.

That February opinion was a reversal of course for the Ninth Circuit, which in September 2021 **struck down** an earlier decision by Judge Mueller to block enforcement of the law. Although the appeals court ruled in its earlier decision that the FAA preempts provisions of the law imposing sanctions on employers, it held that neither the FAA nor Supreme Court precedent allows employers to impose arbitration requirements on unwilling workers.

Two of the three judges who sat on the panel that upheld the law in September 2021 voted of their own volition to **withdraw and revisit** the decision in August 2022.

The Chamber **challenged A.B. 51** in December 2019.

Representatives for the parties did not immediately respond to requests for comment Wednesday.

The state is represented by Kristin Liksa and Chad Stegeman of the California Department of Justice.

The U.S. Chamber of Commerce and the other pro-business groups are represented by Andrew Pincus and Archis Parasharami of Mayer Brown LLP, Bruce Sarchet and Maurice Baskin of Littler Mendelson PC and Donald Falk of Schaerr Jaffe LLP.

The case is Chamber of Commerce of the USA et al. v. Becerra et al., case number 2:19-cv-02456, in the U.S. District Court for the Eastern District of California.

--Additional reporting by Lauren Berg, Vin Gurrieri, Kevin Stawicki and Dorothy Atkins. Editing by Emma Brauer.