

Court Temporarily Halts California's New Ban on Mandatory Employment Arbitration Agreements

by Gabrielle Wirth and Nisha Verma

On October 10, 2019, California Governor Newsom signed a bill seeking to ban employers from requiring employees or applicants to sign arbitration agreements waiving their rights under the Labor Code or the state's anti-discrimination statutes as a condition of employment, continued employment, or receipt of employment-related benefits. This bill, AB 51, applied to contracts for employment entered into, modified, or extended after January 1, 2020. AB 51 sought to impose draconian civil and criminal penalties. Under the amended Labor Code, violation of the law is a misdemeanor and creates civil liability as an unlawful employment practice.

Yesterday, United States District Judge Kimberly J. Mueller of the Eastern District of California granted a temporary restraining order enjoining the enforcement of AB 51, pending a motion for preliminary injunction on this issue in *Chamber of Commerce of U.S. v. Xavier Becerra, et al.* In that case, Judge Mueller found, based on the Supreme Court ruling in *Kindred Nursing Centers Ltd P'Ship v Clark*, that the parties seeking to restrain AB 51 from taking effect raised "serious questions regarding whether the challenged statute is preempted by the Federal Arbitration Act[.]" As the Supreme Court held, "[A] rule selectively finding arbitration contracts invalid because improperly formed fares no better under the Act than a rule selectively refusing to enforce those agreements once properly made." *Kindred Nursing Centers Ltd. P'Ship v Clark*, 137 S. Ct 1421, 1328 (2017). Judge Mueller's order granting the temporary restraining order highlighted the disruption AB 51 will cause in the making of employment contracts, particularly in light of the criminal penalties imposed by the AB 51.

The hearing on the preliminary injunction is set for January 10, 2020. If the court grants the preliminary injunction in *Chamber of Commerce of U.S. v. Xavier Becerra, et al.*, the state will not be able to enforce AB 51 while the litigation continues on the merits. If the court denies the preliminary injunction, employers can expect to see enforcement of AB 51. Stand by for further developments.

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- Gabrielle Wirth
- Nisha Verma

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