

Pay the Piper – California Employers Pressed to Pay Arbitration Fees or Risk Harsh Consequences

By Scott P. Jang and Samia M. Kirmani

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California employers may face harsh consequences for failing to pay arbitration fees on time under a bill ([Senate Bill 707](#)) signed by Governor Gavin Newsom on October 13, 2019. The new law goes into effect on January 1, 2020.

Under the new law, if an employer fails to pay fees required for the commencement or continuation of an arbitration within 30 days of the payment's due date, the employer's conduct is deemed a material breach of the arbitration agreement. The claimant will then have the unilateral option of:

1. Moving the case to court and recovering attorney's fees in connection with the effort;
2. Compelling the employer to pay the fees and recovering attorney's fees in connection with the effort;
3. If the arbitration has already commenced, continuing the arbitration with the employer in default and a potential collection action against the employer at the conclusion of the arbitration; or
4. If the arbitration has already commenced, paying the fees and having them awarded back to the plaintiff as part of the arbitration award, regardless of the merits of the claim.

In addition, the law mandates the court or arbitrator to issue appropriate sanctions against the employer. These may include:

- Monetary sanctions;
- Issue sanctions;
- Evidence sanctions; or
- Terminating sanctions.

Litigation likely will ensue on whether the Federal Arbitration Act (FAA) preempts the new law for creating obstacles to the execution and enforcement of arbitration agreements. The U.S. Supreme Court has made clear that "state-law rules that stand as an obstacle to the accomplishment of the FAA's objectives" are subject to federal preemption. *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 343 (2011).

In the meantime, however, employers should remain vigilant in timely paying arbitration fees and ensure that they have processes in place to do so. Employers should also recognize and anticipate that the new law will be used as leverage against employers, particularly when multiple, coordinated individual actions are filed against one employer.

Jackson Lewis will continue to monitor developments under the law. Please contact a Jackson Lewis attorney with any questions.

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Meet the Authors



[Scott P. Jang](#)

Principal
San Francisco 415-394-9400
Email



[Samia M. Kirmani](#)

Principal
Boston 617-367-0025
Email

Practices

Litigation

Services

Alternative Dispute Resolution
California Advice and Counsel

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