

Court Hears Challenges to California Bar on Mandatory Arbitration Agreements in Employment

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The U.S. District Court for the Eastern District of California heard oral argument on January 10, 2020, on whether to enter a preliminary injunction preventing the State of California from enforcing AB 51 while the court resolves the underlying challenge to the new law on the merits. *Chamber of Commerce of the United States of America, et al. v. Becerra*, No. 2:19-cv-02456-KJM-DB.

AB 51 seeks to bar California employers from requiring employees to sign arbitration agreements relating to claims under the Fair Employment and Housing Act and Labor Code. (For background, see our articles, [California Bar on Mandatory Arbitration Agreements in Employment Temporarily Enjoined](#), [California Bar on Mandatory Arbitration Agreements in Employment Challenged, Injunction Sought](#), and [New California Law Attacks Mandatory Arbitration Again ... But Is It More Bark Than Bite?](#)) A temporary restraining order on enforcement is currently in effect.

The U.S. Chamber of Commerce argued during oral argument that a preliminary injunction should be granted because AB 51 unlawfully seeks to apply different terms of contract law to arbitration agreements and, therefore, violates the Federal Arbitration Act (FAA). Citing two U.S. Supreme Court decisions for support [*Epic Systems Corp. v. Lewis*, 137 S. Ct. 809 (2017); and *Kindred Nursing Centers. Ltd. Partnership v. Clark*, 137 S. Ct. 1421 (2017)], the Chamber stressed that California cannot hold arbitration agreements to higher standards than other contracts, including with respect to contract formation and consent. Further, responding to California's suggestion that there was no imminent threat that criminal penalties would be imposed under AB 51, the Chamber maintained that, in that case, California has no reason to object to entry of a preliminary injunction.

California argued that AB 51 governs only employers' behavior as to agreements with employees generally and that AB 51 does not directly target arbitration agreements. It explained the law also could apply to nondisclosure agreements, forum selection clauses, and other types of agreements not governed by the FAA. In the state's view, AB 51 does not unfavorably target arbitration agreements and evades preemption under the FAA. California also questioned the Chamber's standing to bring a challenge to AB 51.

The court requested supplemental briefing on California's suggestion that the court may lack jurisdiction. By no later than January 17, 2020, the state must submit supplemental briefing raising any jurisdictional challenges (including challenges to standing), as well as its position in the event the court grants the preliminary injunction in part. The Chamber's response to the state's submission is due by January 24, 2020.

The temporary restraining order precluding the state from enforcing AB 51 will remain in effect until January 31, 2020. The temporary restraining order has been modified to limit its application and protection to arbitration agreements covered by the FAA.

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

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