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Controversial Bill Addressing Employee Arbitration Agreements Moves to Governor’s Desk

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California employers have looked more and more to adopting arbitration agreements to minimize the risk of employment litigation and, significantly, potential class action litigation. Employers have been encouraged by some recent cases upholding class action waivers in arbitration agreements, even though the National Labor Relations Board still takes the position such clauses are problematic. Unfortunately, the California legislature has passed AB 465, “Contracts against Public Policy,” which could impact the use of employment arbitration agreements. The Governor has not signed this bill, but it is pending at the time of this article.



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AB 465 would add a new provision to the California Labor Code to prohibit employers from requiring employees to agree to waive any legal right, penalty, forum, or procedure for employment law violations as a condition of employment or continued employment. Meaning, the employer would likely need to provide separate consideration in exchange for employees signing arbitration agreements, among other possible changes. It would also make it unlawful to threaten, retaliate, or discriminate against any person who refuses to

sign such an agreement. AB 465 expressly applies to private arbitration agreements.

If AB 465 is signed by the Governor, the law would affect arbitration agreements entered into on or after January 1, 2016. If enacted, there may be possible legal challenges to AB 465 in federal court in light of the Federal Arbitration Act (“FAA”), which has been interpreted to preempt state law when “applied in a fashion” that disfavors arbitration. However, employers will need to comply with AB 465’s terms if signed by the Governor unless there is a successful challenge to the law.

Employers should monitor the status of AB 465 and consult with an attorney regarding the requirements of this new bill when reviewing or evaluating California arbitration agreements in the workplace.

For more information about AB 465, please contact the author or the Jackson Lewis attorney with whom you regularly work.

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