

Challengers to California's Ban on Mandatory Arbitration Contracts Hint Rehearing Petition Coming

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Following the [decision](#) of a divided panel of the U.S. Court of Appeals for the Ninth Circuit, in *Chamber of Commerce of the U.S., et al. v. Bonta, et al.*, to reverse, in part, a district court's order and vacate the district court's preliminary injunction on enforcement of Assembly Bill 51 (AB 51), on September 22, the plaintiffs-appellees, which include the U.S. Chamber of Commerce, filed an unopposed motion for a 21-day extension of time (*i.e.*, until October 20, 2021) to file a petition for rehearing *en banc*.

Importantly, if the 21-day extension is granted and a petition for rehearing *en banc* filed, the preliminary injunction against enforcement of AB 51 with respect to arbitration agreements governed by the Federal Arbitration Act (FAA) should remain in place until the petition is decided.

AB 51 prohibits employers from requiring employees to sign arbitration agreements concerning disputes arising under the California Fair Employment and Housing Act or California Labor Code. The Ninth Circuit concluded the FAA preempts AB 51 only to the extent AB 51 seeks to impose civil or criminal penalties on employers who have successfully executed arbitration agreements governed by the FAA.

What happens with AB 51 is being watched not just in California. Other states, such as Illinois, New York, and Washington, have passed legislation that, like AB 51, attempt to limit an employer's ability to implement arbitration agreements and also are facing preemption challenges.

Jackson Lewis attorneys will continue to track developments related to AB 51. If you have questions about the Ninth Circuit ruling or arbitration agreements, please contact a Jackson Lewis attorney to discuss.

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