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California Governor Vetoes Bill Prohibiting Mandatory Employment Arbitration Agreements

October 13, 2015

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Employers can breathe a big sigh of relief for now: Governor Jerry Brown vetoed SB 465, which threatened to outlaw mandatory employment arbitration agreements in California. In his veto message, the Governor noted that there are protections in place to ensure that arbitration agreements are fair to employees. In declining to endorse a complete ban on mandatory agreements, he wrote, "A blanket ban on mandatory arbitration agreements is a far-reaching approach that has been consistently struck down in other states as violating the Federal Arbitration Act ('FAA')." He suggested that the California Legislature could appropriately address any remaining fairness issues with specific legislation, rather than an outright ban.

Governor Brown also noted that decisions invalidating arbitration agreements under California law have been challenged on the ground that they conflict with federal law favoring enforcement. Two such cases are currently pending before the U.S. Supreme Court. Similar litigation was expected to follow the ban on mandatory employment arbitration agreements, if enacted. In his veto message, Governor Brown expressed a desire to await the outcome of the lawsuits pending before the U.S. Supreme Court and avoid the inevitable and costly lawsuits that would follow a ban.

What Employers Should Do Now

As the result of the veto, California employers do not need to revise valid arbitration agreements immediately, but further legislative efforts to limit the availability of employment arbitration in the employment context are bound to follow. Accordingly, employers should continue to consult with counsel to ensure that arbitration agreements meet current standards.

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