

Daily Journal

Labor/Employment

Oct. 14, 2019

Governor signs new workplace arbitration, sexual harassment laws

Gov. Gavin Newsom's signatures will have broad impact on the state's labor and employment.

Just hours before his deadline, Gov. Gavin Newsom signed a number of bills Friday that will deeply affect labor and employment in California, but the most far-reaching law is headed for court challenges.

Chief among them is Assembly Bill 51, which prohibits businesses from requiring workers to sign arbitration agreements as a condition of their potential or continuing employment. Authored by Assemblywoman Lorena Gonzalez, D-San Diego, the bill sparked heated debates last month before passing through the Legislature.

While it still allows employees to enter into arbitration agreements voluntarily, AB 51 offers employees seeking redress in labor disputes additional options, said Mike Arias of Arias Sanguinetti Wang & Torrijos LLP in Los Angeles, who is also president of Consumer Attorneys of California.

"It's nice to know that if somebody walks in my office, and they've been discriminated or harassed against, I don't have to evaluate the case with the understanding that I may have to present that case to a single arbitrator," Arias said. "I can now evaluate that case and say, 'You get to avail yourself to the same civil justice system that anybody else gets to use.'"

But Karina B. Sterman, a partner in the litigation and employment law departments of Greenberg Glusker Fields Claman & Machtinger LLP, said the bill will likely face opposition in federal court as it conflicts with the Federal Arbitration Act and several well-established cases, including the state Supreme Court's decision in *Armendariz v. Foundation Health Psychcare Services, Inc.*

Under the 2000 *Armendariz* decision, an arbitration is only lawful if it includes: 1) neutral arbitrators, 2) no limitation on remedies, 3) availability of discovery, 4) a written award, and 5) the employer bearing all the costs of the arbitration.

"The fact that it had all of these built-in protections for the employee meant that it was substantively perfectly fine," Sterman said. "The rest of employment arbitration case law has emanated from *Armendariz*. So unless [AB 51] specifically says that the intent of the statute is essentially to overturn all of that law, it will face up squarely against it."

Another reason companies might fight the new law is it exposes them to potential retaliation lawsuits from the moment they hire an employee, Sterman said.

"Retaliation is the one category that, under all statutes including this one, is so amorphous," she said.

"Basically, someone can claim any change in circumstances as retaliatory. If you get a bad review, you can claim that's retaliatory. Go prove that it's not."

Another significant labor-focused bill, AB 9, extends the time victims of workplace discrimination and harassment have to file claims from one year to three. Assemblywomen Eloise Gómez Reyes, D-San Bernardino; Laura Friedman, D-Glendale; and Marie Waldron, R-Escondido, authored the bill, which passed overwhelmingly in both houses of the Legislature.

Lawmakers proposed the bill to help low-wage workers who either don't know their rights or are dealing with trauma by giving them extra time to file.

Arias, whose organization co-sponsored the bill along with the California Employment Lawyers Association and the San Francisco-based Equal Rights Advocates, applauded the signing.

"All it does is what should happen," Arias said. "It gives people a reasonable amount of time to raise that issue and to be able to pursue it."

Other labor-centric bills Newsom signed into law include AB 547, which provides sexual harassment training for janitorial workers, and AB 539, which cracks down on payday lending and caps interest rates for consumer installment auto-title loans between \$2,500 and \$10,000 at 36%. The bill also prohibits lenders from charging prepayment penalties and imposes minimum and maximum loans terms at one and five years.

"AB 539 is a much needed remedy to one of the many issues related to predatory lending," Assemblymember Monique Limón, D-Santa Barbara, one of the bill's authors, said in a statement. "Governor Newsom's signature on AB 539 sends a strong message that California will not allow lenders to thrive on high-cost loans that often leave consumers worse off than when they started."

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