

# Employers Score Another Hit Against AB 51 as Preliminary Injunction Extends Prohibition on Enforcement by State of California

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In the span of five weeks, a coalition of plaintiffs representing national and state business organizations and employers, including the U.S. Chamber of Commerce and the California Chamber of Commerce, have gone two for two in challenging AB 51 to restore the previous status quo permitting the use of arbitration agreements with their employees. The case is *Chamber of Commerce of the U.S.A., et al. v. Xavier Becerra, in his official capacity as the Attorney General of the State of California, et al*, United States District Court, Eastern District of California, Case No. 2:19-cv-02456-KJM-DB.

AB 51, signed into law by Gov. Gavin Newsom on Oct. 10, 2019, prohibits California employers from requiring prospective and current employees to “waive any right, forum, or procedure” for a violation of the state’s equal employment opportunity law – the Fair Employment and Housing Act – and Labor Codes. On Dec. 30, 2019, just before it was set to take effect, AB 51 was temporarily restrained from enforcement pending a hearing on the plaintiffs’ preliminary injunction. Then, on Jan. 31, 2020, the chief district court judge of the Eastern District of California granted plaintiff’s preliminary injunction.

In her 36-page ruling granting the preliminary injunction, Chief Judge Kimberly Mueller concluded the plaintiffs met their burden of showing AB 51 is likely preempted by the Federal Arbitration Act. The court initially determined it had jurisdiction over the case before moving to the merits of plaintiffs’ argument. Subsequently, the court acknowledged that with AB 51, the state of California’s primary target is arbitration agreements, which subjects them to unequal footing as compared to other contracts, and places “uncommon barriers on employers” who include mandatory arbitration provisions in their employment agreements. Because AB 51 also imposes civil and criminal penalties, including a misdemeanor punishable by imprisonment and/or fine, that interfere with the Federal Arbitration Act, the court found the federal law preempted it. Finally, the court agreed with plaintiffs that employers would likely be irreparably harmed if AB 51 took effect because they would be forced to choose between risking civil or criminal penalties based on the law’s uncertainties, and not using arbitration agreements to avoid penalties.

The plaintiffs now have substantial momentum in their effort to permanently enjoin the state of California from enforcing AB 51.

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National Law Review, Volume X, Number 44

Source URL: <https://natlawreview.com/article/employers-score-another-hit-against-ab-51-preliminary-injunction-extends-prohibition>