

# Governor Signs Legislation Expanding Labor Commissioner Representation to Arbitrations

Article By:

Adam Y. Siegel

Zoe Yuzna

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On September 28, 2020, Governor Newsom signed [Senate Bill 1384](#), which (1) expands the California Labor Commissioner's representation to arbitrations for claimants who cannot afford counsel, (2) requires employers to serve petitions to compel arbitration on the Labor Commissioner, and (3) allows the Labor Commissioner to represent claimants in proceedings to determine whether arbitration agreements are enforceable.

SB 1384 modifies Labor Code section 98.4, which previously provided only that the Labor Commissioner could represent indigent claimants in de novo proceedings (appeals of Labor Commissioner wage claim awards). SB 1384 keeps Section 98.4's original language but adds two new subparts, which provide at (b) and (c), respectively:

- Where a claimant cannot have their wage claim adjudicated by the Labor Commissioner under Sections 98 and 98.1 due to a court order compelling arbitration, at the claimant's request, the Labor Commissioner must represent the claimant in the arbitral proceeding if (1) the claimant is financially unable to afford counsel, and (2) the Labor Commissioner determines, upon conclusion of an informal investigation, that the claim has merit; and
- Petitions to compel arbitration of Section 98, 98.1, or 98.2 claims must be served on the Labor Commissioner and, upon request, the Labor Commissioner may represent claimants in proceedings to determine the enforceability of the arbitration agreement (regardless of whether arbitrability is determined by a judge or an arbitrator).

Going forward, employers will need to be sure to serve petitions to compel arbitration of Section 98, 98.1, and 98.2 wage claims on the Labor Commissioner and can expect to see an increase in challenges to the arbitration of such claims, as well as increased legal representation in the arbitration of such claims.

The subpart (b) provision regarding the Labor Commissioner's informal investigation to determine the claim's merits is a new provision for which there is presently no specific precedent or guidance.

Jackson Lewis will track how this investigation provision is applied and will continue tracking state legislation that is relevant to employers.

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