

## Once Again, Employer Loses Right To Arbitrate By Failing To Timely Pay Arbitration Fees

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### ***Doe v. Superior Court*, 95 Cal. App. 5th 346 (2023)**

An anonymous employee sued her former employer and former manager, alleging multiple instances of sexual harassment and assault. The former employer successfully compelled the case to arbitration. The deadline for the employer to pay the arbitration fees pursuant to Cal. Code Civ. Proc. § 1281.98(a)(1) was October 3, 2022, but the arbitrator did not receive the payment until October 5, 2022, two days after the 30-day statutory grace period had expired. Accordingly, the employee moved to vacate the order compelling arbitration because of the late payment, but the trial court denied this motion.

In this opinion, the Court of Appeal strictly enforced the statutory deadline and held that the employee could proceed with her sexual harassment and assault claims in state court and avoid arbitration. The relevant provision in the California Arbitration Act states that arbitrator fees must be “paid within 30 days after the due date.” Here, the court held that “paid” means when a payment is actually received, rather than when a payment is sent. The employer submitted a check for fees that it owed one business day before the fees were due, but the check was not received until two days after payment was due. Because the fees were received late, the Court of Appeal granted the employee’s petition for writ of mandate and ordered the trial court to grant the employee’s motion to vacate the order granting the employer’s motion to compel arbitration. Said the Court: “We do not find that the proverbial check in the mail constitutes payment.”

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