

FAA Preempts Latest California Anti-Arbitration Statute

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[*Hernandez v. Sohnen Enterprises, Inc.*, 102 Cal. App. 5th 222 \(2024\)](#)

In this decision, the Court of Appeal held that the Federal Arbitration Act (FAA) preempts California Code of Civil Procedure Section 1281.97, which requires that an employer pay (and the arbitrator receive) all arbitration fees that are owed within 30 days or face an automatic “waiver” of the right to arbitrate. The Court relied in part upon Justice John Shepard Wiley Jr.’s spirited dissent in *Hohenshelt v. Superior Court*, 99 Cal. App. 5th 1319 (2024) (*review granted*). Likely the most important takeaway from *Hernandez* is that employers should confirm that their arbitration agreement expressly states that it is governed by the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.* Failure to invoke the FAA may mean that the more employee-friendly (and *arbitration-hostile*) California Arbitration Act (including Section 1281.97) will apply. Compare *Keeton v. Tesla, Inc.*, 103 Cal. App. 5th 26 (2024) (disagreeing with *Hernandez* and holding that Section 1281.98 is not unconstitutional, noting that “*Hernandez* is distinguishable [from *Keeton*] because the arbitration agreement in that case specifically said it was governed by the FAA”).

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