

New California Law Restricts Use of Choice of Law and Other Provisions in Agreements with California-Based Employees

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On September 25, 2016, Governor Brown signed into law SB 1241, which imposes new restrictions on employers' use of choice of law, choice of venue, and choice of forum provisions in agreements with California-based employees.

In the past, employers, especially those based outside of California, have used such clauses to designate a location or venue in another state as the sole forum for adjudicating disputes arising out of employment agreements with California employees. Employers have also used choice of law clauses to designate the law of a jurisdiction outside of California as controlling the interpretation and enforcement of such agreements. Under SB 1241, the use of such clauses will be severely restricted.

The new law, which will apply to contracts entered into, modified, or extended on or after January 1, 2017, will prohibit an employer from requiring any employee who "primarily works and resides in California" as a condition of employment, to agree to 1) adjudicate outside of California a claim arising in California, or 2) a provision that would deprive the employee of the substantive protection of California law with respect to a controversy arising in California. "Adjudication" includes both litigation and arbitration.

The bill provides an important exception, where the employee is "in fact individually represented by legal counsel." Where the employee is represented by counsel in negotiating the terms of an agreement that includes a choice of forum, choice of venue, or choice of law clause, the prohibitions of SB 1241 do not apply.

Contracts that contain provisions in violation of SB 1241 are voidable by the employee. If a provision is rendered void at the request of the employee, the statute provides that the dispute will be adjudicated in California, under California law. SB 1241 also provides for the award of attorney's fees to an employee who is enforcing his or her rights under the statute.

Employers with California-based employees should consider these new restrictions in drafting any employment agreements that go into effect after January 1, 2017, or that are modified or extended on or after that date.

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