

# SB 1241: Forum Selection and Choice of Law Clauses - Long Arm of California Law Just Got Longer

Article By:

Sander van der Heide

Dale R. Kuykendall

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For employers with California employees, there seems to be no way to avoid California's complicated and protective employment laws, and things just got a bit more complicated.

On September 25, 2016, *Governor Brown* signed into law **SB 1241**, which prohibits employers from requiring *California* employees to litigate or arbitrate employment disputes outside of California or under the laws of another state.

SB 1241 applies to any contract entered into, modified, or extended on or after January 1, 2017. The new law prohibits so called "choice of law" and "forum selection" clauses that require employees who live and work in California to bring their employment claims in jurisdictions other than California or under the laws of another state. Any provisions of a contract that contain prohibited choice of law and forum selection clauses are voidable by an employee, meaning that the dispute will be decided in California under California law. The law also provides that the court can award the employee attorney's fees, in addition to an injunction, when an employee successfully challenges the prohibited choice of law and forum selection clauses.

## Key Limitations of SB 1241

Despite its broad impact, the law is subject to a number of key limitations.

- It does not apply to existing contracts unless they are modified or extended on or after January 1, 2017.
- It only applies to employees who "primarily" reside and work in California.
- Therefore, non-California choice of law and forum selection clauses may be permissible for employees who primarily reside outside of California even though they do work in California.
- It only applies when agreement to the choice of law and forum selection clauses are a "condition of employment."

- Although the law is not clear, presumably contracts dealing with ancillary issues such as job benefits, bonus programs, etc., may not be covered.
- Only the choice of law and forum selection provisions, not the entire contract, are voidable.
- The law does not apply to contracts where the employee is individually represented by an attorney in negotiating the terms of the agreement.

## **Best Practices for Employers**

Employers should review their employee agreements to determine if they require, as a condition of employment, choice of law and forum selection clauses, which are prohibited by the new law. If so, employers should modify those agreements to provide an express exemption for California employees with respect to the choice of law and forum selection clauses and ensure that the remaining portions of the agreements are consistent with California law.

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