Ninth Circuit Blocks California's Ban on Mandatory Arbitration Agreements

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Employers in California can require workers to sign arbitration agreements as a condition of employment.

On February 15, 2023, a divided panel of the U.S. Court of Appeals for the Ninth Circuit ruled that the Federal Arbitration Act preempts California Assembly Bill 51 (AB 51), a 2019 measure that prohibited employers from requiring job applicants or employees to agree to mandatory arbitration of certain claims as a condition of employment, continued employment or the receipt of any employment-related benefit.

A majority of the three-judge panel voted *sua sponte* in August 2022 to reconsider its decision in *Chamber of Commerce of the United States of America v. Rob Bonta*, 13 F.4th 766 (9th Cir. 2021), in which the same panel partially upheld AB 51.

The panel's decision to revisit the case came after the U.S. Supreme Court's decision in *Viking River Cruises, Inc. v. Moriana*, 142 S. Ct. 1906 (2022), which arguably bolstered the argument that the Federal Arbitration Act preempts AB 51. In its February 15, 2023, ruling, the panel majority stated: "Because the FAA's purpose is to further Congress's policy of encouraging arbitration, and AB 51 stands as an obstacle to that purpose, AB 51 is therefore preempted."

AB 51 was signed into law by Gov. Gavin Newsom and was set to take effect on January 1, 2020, in order to protect employees from "forced arbitration." AB 51 made it a criminal offense for an employer to require an existing employee or an applicant for employment to consent to arbitrate violations of the California Fair Employment and Housing Act and the California Labor Code as a condition of employment.

The Ninth Circuit panel stated that the "[Supreme] Court has made clear that the FAA's preemptive scope is not limited to state rules affecting the enforceability of arbitration agreements, but also extends to state rules that discriminate against the formation of arbitration agreements."