

## **CALIFORNIA MANDATORY ARBITRATION BAN BLOCKED; SUPREME COURT RULES ON BAG CHECK POLICIES**

### **Preliminary Injunction Prohibits Enforcement of Mandatory Employment Arbitration Ban**

On February 6, 2020, U.S. District Court Judge Kimberly Mueller issued an order granting a preliminary injunction barring enforcement of AB-51, California's ban on mandatory arbitration agreements in employment, for the foreseeable future.

Judge Mueller found that AB-51 places arbitration agreements on "unequal footing" and interferes with legally permissible arbitration agreements by placing civil and criminal penalties on employers. AB-51 therefore conflicts with the Federal Arbitration Act's purpose to promote arbitration agreements. That conflict means that AB-51 is likely pre-empted by federal law and justified the Court issuing a preliminary injunction against enforcement.

The preliminary injunction will remain in place unless the order granting preliminary injunction is reversed on appeal or there is a final judgment in the case. California's Attorney General may seek an immediate appeal of the order granting the preliminary injunction or may seek a final judgment (probably through summary judgment). Either way, California's ban on mandatory arbitration agreements will likely remain unenforceable for months to come, and perhaps permanently.

### **Compensable Bag Check Time**

On February 13, 2020, the California Supreme Court issued an opinion ruling that time spent by employees waiting to have their personal bags checked before leaving the workplace is compensable work time.

In *Frlekin v. Apple*, the California Supreme Court addressed whether California law requires that

employees be paid for time spent waiting for and conducting bag checks in order to leave the employer's premises. Apple's policy required all retail employees to undergo exit searches of their bags and personal Apple devices. In order to complete the exit search, employees had to locate a manager to conduct the bag check and wait on average five to twenty minutes after clocking out before completing the inspection.

The Supreme Court concluded that the employees were under the "control" of their employer because the employees were not free to leave while waiting for the completion of the bag check. The Supreme Court also dismissed the argument that bringing a bag or Apple device to work was "voluntary" or a "benefit" provided by the employer because of the "realities of ordinary, 21<sup>st</sup> century life."

Notably, the Supreme Court last year drastically narrowed the "de minimis" rule for California wage violations. If employees are required to be detained for a security inspection for any measurable amount of time, it will likely be considered under the control of the employer and compensable.

There are still open questions about whether very brief bag checks are compensable. Further, employers have other options to consider for compliance such as adding minutes to employees' time records to account for the time to clear security or regulating the type and size of bags employees are allowed to bring to work.

If you have any questions about how your company should respond to this decision, please contact us at the number below.

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