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SB 1241: California Employees May Soon Be Able to Void State Venue and Choice of Law Provisions

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Employees who primarily reside and work in California may soon be able to void forum selection or choice of law clauses in most agreements they have with their employer under Senate Bill No. 1241, signed by Governor Jerry Brown on September 25, 2016. The new legislation, intended to ensure that those living and working in the state have the benefit of a local forum and the protections of California law, applies only to agreements that are entered into, modified, or extended after January 1, 2017.

Impact of SB 1241

SB 1241 arose from a stated Legislative concern that California employees are being required to adjudicate claims with their employers in another state, or to pursue claims under state laws that are less protective of employees than California law.¹ For all employment agreements required as a condition of employment—including but not limited to arbitration agreements, executive contracts, and covenants not to compete—SB 1241 provides an employee the unilateral right to void any such contractual provision that would:

- Require an employee who “primarily resides and works in California” to adjudicate claims arising in California in any locale outside the state (the forum selection provision);² *or*
- “[D]eprive [such an] employee of the substantive protection of California law with respect to a controversy arising in California” (the choice-of-law provision).³

Under SB 1241, such a forum selection or choice of law provision would be voidable by the employee. An employee may void only the specific provision, not the entire agreement.⁴ A reviewing California court can enjoin reliance on the provision, declare it unlawful, and/or award reasonable attorneys’ fees.⁵

The legislation is limited in several respects:

- First, it does not apply to existing agreements; only new agreements (or modifications or extensions of existing agreements) are implicated.
- Second, it only applies to employees who “primarily” live and work in California; both preconditions must be present.



- Third, the provision does not apply where the employee was represented by counsel when the agreement was reached (or, presumably, extended or modified).
- Fourth, it only applies if the employee's employment is conditioned on the agreement. For example, the legislation will apply to an agreement to arbitrate if, but only if, an agreement to arbitrate is a precondition to employment. Opt-out arbitration agreements and contracts that affect benefits of a job—such as a bonus program—but not the holding of the job, are likely not covered.
- Finally, the legislation only permits employees to void forum selection or choice of law clauses if the underlying claims "arise in California." If the incidents giving rise to the claim occur in another jurisdiction, by its own terms, the legislation will not apply.

Next Steps

Each employer should first determine whether they have employees who would qualify for treatment under the statute—*i.e.*, employees who "primarily reside and work in California." If so, the employer should review the various types of agreements it typically requires as a condition of employment that contain forum selection or choice of law provisions and determine whether each form of agreement should be modified for use after January 1 to reflect the new legislation—for example, by expressly excepting California-based employees from those clauses. Finally, employers should review the severability clause of any implicated agreement to determine the impact invocation the statute might have for the viability of the rest of the agreement.



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¹ Senator Bob Wieckowski (D-Fremont), SB 1241's author, explained: "A worker who lives and works in California should *never* be forced to travel to a different state to exercise rights she has under California law." Senate Floor Analyses, SB 1241 at 5 (Aug. 31, 2016) (emphasis in original).

² Under SB 1241, "adjudication includes litigation and arbitration." SB 1241, § 925(d).

³ *Id.* § 925(a)(1)-(2).

⁴ *Id.* § 925(b) ("Any provision of a contract that violates subdivision (a) is voidable by the employee") (emphasis added).

⁵ *Id.* § 925(c).

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