

Hi, this is Chris Micheli with the Sacramento governmental relations firm of Aprea & Micheli and an adjunct professor at McGeorge School of Law. Today's podcast is on the enactment of Assembly Bill 51 in the 2019 legislative session, where California is attempting to ban employment arbitration agreements. AB-51 was enacted as Chapter 711 and signed into law on October, 10th.

Section 1 of the bill provides several uncodified statements of legislative intent. Section 2 of the bill adds a new provision to the law, proclaiming that it's an unlawful employment practice for an employer to violate Section 432.6 of the Labor Code, which AB-51 is adding to the law. Therefore, any violation of the prohibition regarding pre-dispute arbitration would be deemed an unlawful employment practice, under California's Fair Employment and Housing Act, which provides a number of remedies for its violation, including injunctive and declaratory relief, punitive damages and attorney's fees.

Section 3 of this bill adds an entirely new section to the Labor Code. The new law essentially prohibits a person from requiring any applicant for employment, or any employee, to waive any right, forum or procedure, for a violation of any provision of FEHA, or other specific statutes governing employment, as a condition of employment, continued employment or the receipt of any employment-related benefit. This prohibition includes the right to file and pursue a civil action or complaint, or to notify any State agency, other public prosecutor, law enforcement agency, or any court or other governmental entity of any alleged violation of the law.

This new statute also prohibits an employer from threatening, retaliating, or discriminating against, or terminating any applicant for employment, or any employee, because of his or her refusal to consent to the waiver of any right, forum or procedure for a violation of these statutes that govern employment. In addition, the new law states that an agreement that requires an employee to opt out of a waiver, or take any affirmative action in order to preserve their rights, is deemed a condition of employment.

Now, in terms of enforcement, in addition to any injunctive relief and any other remedies that are available, the new law provides that a court may award a prevailing plaintiff, enforcing his or her rights under Section 2, reasonable attorney's fees. Now, there is one exception to this prohibition, and that's for persons registered with a self-regulatory organization, as defined in the Securities Exchange Act of 1934, or any regulations adopted. Basically, these pertain to a requirement for a self-regulatory organization, that a person arbitrate disputes that arise between that person and their employer.

There is also a statement in AB-51 that's included, that says, "Nothing in this Section is intended to invalidate a written arbitration agreement that is otherwise enforceable under the Federal Arbitration Act." Now, excluded from this new law are post-dispute settlement agreements, and negotiated severance agreements. And its provisions are perspective in application, because the new law applies to contracts for employment entered into, modified, or extended, on or after January 1st, 2020.

There is also a severability clause contained in the bill. In other words, the provisions of this new section of law are severable, so that if any provision of the section or its application is held invalid by the courts, then that invalidity shall not affect the other

provisions, and they can be given effect without having that invalid provision or application negating the remaining provisions.

Thanks for joining this brief overview of Assembly Bill 51.