

California Limits Use of Choice-of-Law and Venue Provisions in Employment Agreements

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On September 25, 2016, Governor Jerry Brown signed into law SB 1241, legislation that prohibits employers from requiring employees who primarily reside and work in California to agree to contract provisions that require them to adjudicate claims arising in California outside of the state. Further, employees who primarily reside and work in California cannot be forced to sign agreements that deprive them of the substantive protections of California law.

What this means is that contract provisions that set venue outside of California or provide for a choice-of-law other than California law are now voidable by employees. Proponents of the law say that SB 1241 will prevent companies from contracting around California's relatively employee-friendly labor laws through their employment agreements. SB 1241 also bars employers from compelling out-of-state arbitration. The law will apply to all employment agreements entered into, modified, or extended on or after January 1, 2017.

The new law has particular significance for large, multi-state corporations, which typically have choice-of-law and venue provisions in employment agreements specifying, for example, the company's state of incorporation or principle place of business, in order to ensure predictability. Now, such provisions can be voided by the company's California-based employees, and employees who are successful may be awarded their reasonable attorneys' fees. There is, however, a carve out: SB 1241 will not apply to a contract with an employee who was represented by legal counsel in negotiating the provisions relating to venue, forum, or choice of law.

Companies should consider this legislation when entering into new employment agreements, or renewing preexisting agreements, for their California employees after the first of the year. Our lawyers have deep counseling and litigation experience on these issues. If you would like to discuss these issues further or have questions about this alert, please contact one of the lawyers listed below.

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