

Paul Plevin & Sullivan LLP

Serving California Employers

Recent
Developments

CALIFORNIA ARBITRATION BILL DROPPED

(September 3, 1999)

SUMMARY: We previously reported that the California Assembly passed a bill that would ban arbitration clauses in most employment contracts. This caused anxiety for some employers who have such agreements in place. However, supporters of arbitration can now rest easy, at least until next year, because the proponents of this bill have withdrawn it.

Also, **save the date** for Paul Plevin & Sullivan's seminar "Getting Your Employment Practices Ready for the Year 2000" on October 20, 1999 at 8:15 a.m. See below for details.

DETAILS: Since [AB 858](#) was passed in the Assembly, it underwent substantial changes. Most significantly, the bill's author was forced to limit its coverage to employees making under \$150,000 annually. The argument was that high wage earners were more likely to understand their contractual obligations and, therefore, are not victimized by being limited to arbitration, rather than a jury trial. It was this cap on coverage that apparently caused AB 858's demise. The plaintiffs' lawyers who supported the bill felt there should be no cap at all (because it would limit their ability to get the higher end cases that they were really after). Rather than accepting this cap, they decided it was better to withdraw the bill and rally their forces on another day.

The bill also suffered from a lack of clear support from Governor Davis. As a result, opponents of the bill felt they had the votes to prevent even the more limited version of the bill from passing.

The full text of AB 858 may be found at http://www.leginfo.ca.gov/pub/bill/asm/ab_0851-0900/ab_858_bill_19990602_amended_asm.html. Its legislative history may be found at http://www.leginfo.ca.gov/pub/bill/asm/ab_0851-0900/ab_858_cfa_19990603_021903_asm_floor.html

WHAT THIS MEANS: For now, employers are still free to use arbitration agreements in California. The Ninth Circuit (the federal appellate court that has responsibility for California) has recently demonstrated substantial hostility toward arbitration agreements for employees, but California's appellate courts continue to uphold the enforceability of these agreements. Of course, it is important to make sure that any arbitration agreement complies with the requirements articulated by recent California Court of Appeal decisions. These requirements include true mutuality of obligation, neutrality of the decision-maker, no-cost access to the arbitration process for the employee, and clear disclosure of the rights the employee is waiving by signing the agreement (i.e., the right to a jury trial and, specifically, the right to bring discrimination claims before a jury). A summary of these cases can be found in our 1998-1999 new developments article on our [website](#).

SAVE THE DATE: On October 20, 1999, Paul Plevin & Sullivan will be presenting a morning seminar "Getting Your Employment Practices Ready for the Year 2000." We will address what you need to do to update your employment policies, handbooks and documentation to be ready for the new legislation that goes into effect on January 1, 2000. We will also present workshops (not just "talking heads") on how California's new age discrimination law impacts your ability to conduct reorganizations or layoffs

and on how you can best deal with the changing rules under the Americans with Disabilities Act. The seminar will be from 8:15 – 11:45 a.m. at the Hyatt Regency Hotel in La Jolla. Cost: \$50 per person. A registration announcement will follow in the next few weeks. To pre-register, send email to lkemp@paulplevin.com. We hope you can join us.

If you would like any further information about California law regarding arbitration of employment disputes, please feel free to call or e-mail Mike Sullivan (msullivan@paulplevin.com (619) 744-3645) or any of our other attorneys at (619) 237-5200.

This E-Update is offered as general information to our clients and friends. The Update is not intended as legal advice applicable to any specific situation and should not be taken as such.

Send comments to info@paulplevin.com. Last modified 07/15/99