

# Ninth Circuit Nixes California's Employment Arbitration Agreement Ban

FEBRUARY 24, 2023

Authors: [W. Eric Baisden](#), [Adam Primm](#), [Eric M. Flagg](#)

Last week, the Ninth Circuit issued a significant ruling in *Chamber of Commerce v. Bonta*, concluding that California's Assembly Bill 51 ("AB 51") is preempted by the Federal Arbitration Act ("FAA"). AB 51, which was passed by the California legislature in 2019, purported to prohibit employers from requiring current or prospective employees to sign arbitration agreements and arbitrate certain workplace claims as a condition of employment. While AB 51 was set to go into effect on January 1, 2020, an injunction sought by the Chamber of Commerce and granted in late 2019 prevented the law from taking effect. The law was partially upheld by the Ninth Circuit in a 2021 ruling, before ultimately being rejected in its entirety by the Court last week.

This ruling by the Ninth Circuit is the most recent in a long line of decisions, both by federal circuit courts and the U.S. Supreme Court, deferring to the principle that parties' freedom to enter into mandatory arbitration agreements is favored under the FAA. The Court reasoned that AB 51 "'singles out arbitration provisions as an exception' to generally applicable law," and pointedly observed that "[i]f the parties agreed to resolve a matter by arbitration, 'the FAA pre-empts state laws which 'require a judicial forum for the resolution of those claims.''" Ultimately, the Court concluded that AB 51 as a whole is preempted by the FAA.

The Court's decision in *Bonta* follows the Supreme Court's 2022 decision in *Viking River Cruises v. Moriana*, in which the Court struck a serious blow to California's existing arbitration precedent and California's Private Attorney General's Act ("PAGA") (see prior analysis [here](#)). *Viking River Cruises* held that a person's individual PAGA claims were not excluded from arbitration under a valid, bilateral arbitration agreement, resulting in the person lacking standing to pursue non-individual, representative PAGA claims, and overturning California Supreme Court precedent from 2014 in *Iskanian v. CLS Transportation*. A portion of the Supreme Court in *Viking River Cruises* elaborated that new or modified legislation could provide standing for individuals to pursue non-individual PAGA claims where individual PAGA claims were addressed in a different forum like arbitration. While AB 51 was not targeting that particular PAGA issue, in *Bonta*, California's resistance to arbitration agreements takes another hit as the Ninth Circuit rejects the state legislature's attempts to prohibit arbitration agreements as a condition of employment.

**For more information on this ruling, contact a member of Bensch's [Labor & Employment Practice Group](#).**

**Eric Baisden at [ebaisden@beneschlaw.com](mailto:ebaisden@beneschlaw.com) or 216.363.4676.**

**Adam Primm at [aprimm@beneschlaw.com](mailto:aprimm@beneschlaw.com) or 216.363.4451.**

Eric M. Flagg at [eflagg@beneschlaw.com](mailto:eflagg@beneschlaw.com) or 216.363.6196.