

## Alert

### California Passes Legislation Limiting Enforceability of Forum Selection and Choice of Law Provisions in Employment Contracts

October 14, 2016

California Governor Jerry Brown recently signed into law Senate Bill No. 1241 (codified at California Labor Code Section 925), which generally prohibits employers from requiring an employee who primarily lives and works in California to enter into a contract that: (i) requires the employee to litigate or arbitrate disputes with his or her employer outside of California; or (ii) “deprive[s] the employee of the substantive protection of California law with respect to a controversy arising in California.” These restrictions apply to agreements entered into as a condition of the employee’s employment, such as employment agreements, confidentiality agreements and arbitration agreements.

The law was drafted as a response to concerns over employers imposing choice of law and forum selection provisions on California residents; groups advocating for the law characterized these provisions as attempts by employers to “evade California law, make it more difficult for employees to pursue legitimate claims, and ensure that any disputes are decided in a forum that is most favorable to the employer.”<sup>1</sup>

Under the law, any contract provision that violates these requirements will be “voidable by the employee.” If a provision is rendered void at the request of an employee, the matter must be adjudicated in California, with California law governing the dispute. The law will allow the employee to void only the forum selection or choice of law provision, not the entire contract.

The law will not apply if the employee was represented by legal counsel when negotiating the forum selection or choice of law provision.

The law will only apply to contracts entered into, modified or extended on or after Jan. 1, 2017. Employers with California-based employees should consider the new law when entering new employment agreements. Employers that want to apply out-of-state forum selection or choice of law provisions to California-based employees may consider entering, modifying or extending the contracts containing such provisions before Jan. 1, 2017. After Jan. 1, 2017, if employers want to utilize those provisions, they should consider encouraging California-based employees to obtain independent counsel, possibly even by reimbursing some amount of the employees’ attorneys’ fees, when entering, modifying or extending employment-related agreements that contain forum selection or choice of law provisions.

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<sup>1</sup> Cal. Senate Floor Analysis, Aug. 31, 2016, at 5, available at [https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=201520160SB1241#](https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160SB1241#).

Authored by [Mark E. Brossman](#), [Ian L. Levin](#), [Ronald E. Richman](#), [Holly H. Weiss](#), [Scott A. Gold](#), and Ann Margius.

If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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