



New Labor Code Section Prevents Employers from Using Out-of-State Choice of Laws Provisions in Contracts with California Employees

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On September 27, 2016 Governor Jerry Brown signed a new law impacting the contract rights of California employees.

Labor Code Section 925 imposes new limits on contract provisions that seek to impose choice of law and venue provisions. It applies to employment contracts involving employees who primarily reside and work in California. For example, a Minnesota corporation cannot have an enforceable agreement, which applies Minnesota law, with an employee who primarily resides and works in San Francisco.

Under the law, employers may not condition employment upon agreeing to contract provisions that either:

- (a) require employees to adjudicate claims arising in California outside of California; or
- (b) deprive employees of the substantive protection of California law for claims arising in California.

In other words, as to employees primarily working and residing in California, employers may not require employees to agree to choice of law or venue provisions that require claims arising in California to be litigated in other states, or under another state's laws.

Foreign choice of law provisions were primarily used to try to circumvent California's long-standing prohibition on covenants not to compete, or to otherwise make the protections of California law unavailable to California workers. Section 925 should put an end to that practice.

By the terms of the new law, contracts that violate Section 925 are voidable at the request of the employee. The law provides that both injunctive relief and attorney's fees are available to enforce Section 925.

The law provides a single exception: it does not apply to any contract in which the employee is "in fact" individually represented by counsel in negotiating the venue and choice of law terms of the contract.

The law applies to employment contracts entered into, modified or extended after January 1, 2017. It is currently unclear what "extended" means, but we expect that at-will relationships which "extend" beyond January 1, 2017 will likely be encompassed by Section 925. Because employment contracts are constantly amended, updated, modified and extended, employers can expect that this law will ultimately apply to all of their contracts with California employees who primarily work and reside in California.



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