

Date of Hearing: July 29, 2020

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT

Ash Kara, Chair

SB 1384 (Monning) – As Amended March 25, 2020

**SENATE VOTE:** 31-7

**SUBJECT:** Labor Commissioner: financially disabled persons: representation

**SUMMARY:** Expands the Labor Commissioner's (LC) authority to represent wage claimants to include arbitral proceedings and proceedings to determine the enforceability of an arbitration agreement. Specifically, **this bill:**

- 1) Authorizes the LC to represent a wage claimant in proceedings to determine the enforceability of an arbitration agreement whether in a judicial or arbitral forum.
- 2) Requires the LC to represent a wage claimant in an arbitral proceeding if that claimant is unable to afford counsel and if the LC determines, upon conclusion of an informal investigation, that the claim has merit.
- 3) Requires that a petition to compel arbitration of a claim brought pursuant to Labor Code Sections 98, 98.1 or 98.2 be served on the LC.

**EXISTING LAW:**

- 1) Authorizes the LC to investigate employee complaints and to provide for a hearing, known as a Berman hearing, in any action to recover wages, penalties or other demands for compensation.
- 2) Provides that after a hearing on an employee complaint or action, the LC must file an order, decision, or award which includes a summary of the hearing and the reasons for the decision.
- 3) Permits a party seeking review of the LC's order, decision, or award to file an appeal with the superior court.
- 4) Authorizes the LC to represent a claimant who is financially unable to represent themselves in a proceeding where a party is seeking judicial review of the LC's order, decision, or award.

**FISCAL EFFECT:** According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

**COMMENTS:** The use of mandatory arbitration agreements in the employment context has garnered the attention of both lawmakers and the public. Recognizing the inherent power imbalance these contractual arrangements bring to the employee-employer relationship, last year the Legislature passed AB 51 (Gonzalez) which prevents employers from conditioning employment on an employee's agreement to waive a right, forum, or process for a violation of the California Fair Employment and Housing Act (FEHA) or the Labor Code. Mandatory arbitration agreements may prevent employees from using the LC's informal wage claim process and prevent employees from being represented by the LC in further judicial proceedings

challenging the results of that wage claim process. By allowing the LC to represent a wage claimant in an arbitral forum, this bill would be a step toward balancing the power in employment arbitration proceedings.

According to the author, “[w]hen an employee files a wage claim the claimants often cannot afford private counsel and face a higher prospect of a defeat in arbitration or settlement of their claim at a substantial discount. SB 1384 would update existing law to allow claimants to receive no-cost representation from the Labor Commissioner in an arbitral proceeding. This proposal addresses the increasing use of mandatory arbitration agreements in employment and would allow the Division of Labor Standards Enforcement to represent wage claimants in arbitral proceedings when they are unable to resolve the wage claim during a Berman hearing.”

In support, the California Employment Lawyers Association argues that “[a]s a result [of forced arbitration], workers are forced into a forum that is significantly more complex and demonstrably more employer-friendly than the forum provided by our State Labor Commissioner. For workers who do not have access to counsel, they are at even more of a disadvantage trying to navigate the arbitration process on their own. Claimants who cannot afford private counsel face a higher prospect of a defeat in arbitration or a decreased settlement.”

### **Prior Legislation**

AB 51 (Gonzalez) Chapter 711, Statutes of 2019 prohibits an employer from requiring an employee to waive any right, forum, or procedure for a violation of any provision of the California Fair Employment and Housing Act (FEHA) or the Labor Code as a condition of employment, continued employment or the receipt of any employment-related benefit. It also prohibits an employer from threatening, retaliating, or discriminating against an employee for refusing to consent to such a waiver.

### **REGISTERED SUPPORT / OPPOSITION:**

#### **Support**

California Conference Board of The Amalgamated Transit Union  
California Conference of Machinists  
California Employment Lawyers Association  
California Teamsters Public Affairs Council  
Engineers and Scientists of California, Ifpte Local 20  
Inlandboatmen's Union of The Pacific (IBU)  
Professional and Technical Engineers, Ifpte Local 21  
Unite Here International Union  
Utility Workers Union of America

#### **Opposition**

None on file.

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