

SENATE THIRD READING
SB 1384 (Monning)
As Amended March 25, 2020
Majority vote

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.

Major Provisions

- 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.

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), Chapter 711, Statutes of 2019 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:

"When 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."

Arguments 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."

Arguments in Opposition:

None on file.

FISCAL COMMENTS:

According to the Assembly Appropriations Committee, minor and absorbable costs to the Division of Labor Standards Enforcement.

VOTES:**SENATE FLOOR: 31-7-2**

YES: Allen, Archuleta, Atkins, Beall, Bradford, Caballero, Chang, Dodd, Durazo, Galgiani, Glazer, Lena Gonzalez, Hertzberg, Hill, Hueso, Hurtado, Jackson, Leyva, McGuire, Mitchell, Monning, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk

NO: Dahle, Grove, Jones, Melendez, Moorlach, Morrell, Nielsen

ABS, ABST OR NV: Bates, Borgeas

ASM LABOR AND EMPLOYMENT: 6-1-0

YES: Kalra, Flora, Carrillo, Gonzalez, Jones-Sawyer, Luz Rivas

NO: Diep

ASM APPROPRIATIONS: 13-4-0

YES: Gonzalez, Bauer-Kahan, Bloom, Bonta, Calderon, Carrillo, Chau, Eggman, Gabriel, Eduardo Garcia, Petrie-Norris, Quirk, Robert Rivas

NO: Bigelow, Megan Dahle, Voepel, Fong

UPDATED:

VERSION: March 25, 2020

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