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There They Go Again! California Launches Another Attack on Arbitration

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You might think that California employers who seek nothing more than enforcement of a perfectly reasonable arbitration agreement might finally be able to stop looking over their shoulders, but that is simply not going to happen anytime soon. It seems that with each new legislative session, Sacramento comes up with yet another scheme to limit employers' right to arbitrate employee disputes.

As experienced practitioners may know, there is some daylight between the two principal arbitration statutes governing workforces in California: the Federal Arbitration Act ("FAA") and the California Arbitration Act ("CAA"). In particular, the FAA exempts contracts involving workers engaged in foreign or interstate commerce as well as those alleging sexual harassment or sexual assault.

That loophole will close as of January 1, 2027. On June 30, 2026, Governor Gavin Newsom signed into law Assembly Bill 2155 ("AB 2155"), a short bill that will cast a long shadow in the Golden State. Under the new law, an arbitration agreement will be unenforceable under the CAA to the extent it is unenforceable under the FAA.

In practical terms, this means that employers generally will not be able to turn to the CAA as a backstop when a dispute lies within an FAA exclusion. In AB 2155, the California Legislature specifically identified the two FAA exclusions listed above but also covered potential future exemptions that may be carved out by incorporating "any and all exclusions" under the FAA into California law. California employers don't need to send their arbitration agreements to the shredder just yet. But they should consider reviewing existing agreements and enforcement strategies before the new year to identify any areas in which existing FAA exclusions may be implicated. Because come January 1, any employer hoping the CAA will provide a second bite at the arbitration apple may find that AB 2155 has taken it off the menu.

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