



California Corporate & Securities Law

California Employers And Employees May Soon Be Able To Choose Any Forum/Law/Venue They Want So Long As Its California

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Recess Is Almost Over

The California legislature is in recess until August 15 at noon (J.R. 51(a)(3)). The last day for any bill to be passed this year will be September 9 (J.R. 61(a)(13)). This means that many bills will soon begin their final sprint to the Governor's desk.

A Bill To Watch

One bill to watch is [AB 267](#). This bill would prohibit an employer from requiring an employee or job applicant, as a condition of employment:

- to waive the application of California law to any dispute relating to employment, or the securing of employment, in California.
- to resolve outside of California any dispute regarding employment, or the securing of employment, in California.

AB 267 also declares any choice of law, choice of forum, or choice of venue provision in a job application, employment agreement, employment handbook, or other statement of an employer's policies applicable to its employees, to be unconscionable, violative of the public policy of California, and void if the provision would have the effect of either of the following: (1) Requiring the employee or job applicant, as a condition of employment, to resolve outside of California claims that arose from employment, or the securing of employment, in California; (2) Depriving the employee or job applicant of the protection of California law for claims arising from employment, or the securing of employment, in California.

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Vetoed Bill Gets New Life

Assembly member [Sandre Swanson](#) is the bill's author and the [California Employment Lawyers Association](#) is the bill's source. In 2007, Assembly member Swanson was able to get an identical bill (AB 1043) through the legislature only to see Governor Schwarzenegger veto it with the following message:

This bill appears to create a solution in search of a problem. California law currently ensures that employees cannot be subjected to unconscionable contract provisions that would force them to forego the protections of California law or litigate their claims in an inappropriate out-of-state forum. Moreover, this bill creates unnecessary and unhelpful uncertainties for the employers and employees concerning issues of federal preemption. Lastly, I strongly support the right of parties to freely contract for the terms of their employment relationship. This bill fundamentally conflicts with that policy.

What Does This Mean For Equity Compensation Plans?

An interesting, but unanswered question, is what effect this bill will have on stock option, stock purchase and other equity compensation plan agreements. These plans may cover employees in multiple states and yet specify that they are governed by a single state's laws. As to existing plans and agreements, companies may look to Art.I, Sec. 10, cl. 1 of the U.S. Constitution.

Support And Opposition

The bill is supported by labor and opposed by the [California Chamber of Commerce](#). It is currently on third reading and thus may reach Governor Brown's desk after the recess.

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