California Severely Limits Employment-Related Choice of Law and Venue Provisions

To follow up on our **Client Alert of April 25, 2016**, California Gov. Jerry Brown signed **California Senate Bill 1241**, codified as Labor Code section 925, into law earlier this week. This means that starting Jan. 1, 2017, out-of-state choice of law and venue provisions in California employment agreements are unlawful unless the employee is individually represented by counsel in negotiating the terms of the agreement. This law strips employers of the ability to designate the state in which employment lawsuits would be venued and what law should be applied, except in those rare circumstances where the employee is represented by his or her own legal counsel. It similarly restricts employers' ability to require employees to agree to non-California law or a venue outside of California for claims arising within California, whether in litigation or arbitration. If required, or even agreed to by the parties, such provisions are inoperative and voidable by the employee unless he or she was individually represented by counsel. The stated goal of the bill is to ensure that employees are not deprived of the protection of California law or their local courts with respect to controversies arising in the state (frequently, California law is among the most employee-friendly jurisdictions in the country). The effect on companies is likely to be significant.

It is critical to note that the law applies not just to all new employment contracts entered into after Jan. 1, 2017, but also to agreements modified or extended after that date. In addition, individuals enforcing their rights under the new law will be entitled to seek injunctive relief and other remedies, as well as attorneys' fees if they are successful.

What this means is that after January 2017, companies that hire employees who primarily reside and work in California will generally be precluded from designating another state's law—such as the state where the company is based—as the governing law in their employment contracts. The option of pre-selecting the venue for any dispute will also be lost.

Many employers have standard choice-of-law and forum clauses in their existing employment, arbitration, confidentiality, and related employment agreements setting forth the state law that will control any disputes and where actions can be brought. The traditional reasons for including these provisions are simple: to protect the employers' bests interests by preselecting familiar law the employers know they are in compliance with, and venues that are convenient and likely less "plaintiff friendly." Now employers will, in most cases, no longer be able to pre-select venue or applicable law outside of California; instead, employers may be hauled into the California court of the employee's choosing, and California's often less employer-friendly laws will apply to the dispute.

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California and federal laws and regulations pertaining to employment matters are constantly evolving and show a steady focus on contract and arbitration issues. As a best practice, in light of this new law and other recent legal developments, employers who hire workers in California should work with legal counsel to audit their employment contracts, arbitration agreements, restrictive covenants and related employment documents and ensure they are up-to-date and compliant.

This document is intended to provide you with information regarding SB 1241. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact one of the attorneys listed below or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.

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