

SB 762 (Wieckowski)

Arbitration Due Date Transparency

SUMMARY

This bill clarifies the Forced Arbitration Protection Act (SB 707 of 2019) to encourage transparency around the due date of arbitration fees in order to prevent unnecessary delays in the resolution of disputes for workers and consumers bound by forced arbitration provisions.

PROBLEM

Mandatory arbitration provisions have become an ever-growing aspect of consumer transactions and employment relationships. Over half of America's workforce has been forced to sign mandatory arbitration provisions as a condition of employment. Under these terms, consumers and workers whose rights have been violated cannot pursue their claims in court and instead must submit their claims in an arbitration proceeding that overwhelmingly favors businesses and employers.

With workers and consumers barred from court, businesses are able to strategically withhold or delay payment to the arbitration service provider to obstruct the arbitration proceeding and the ability to pursue a claim.

Under SB 707 of 2019, consumers and workers have procedural options in the event that a corporation delays arbitration proceedings or fails to pay its share of the arbitration fees and costs within 30 days after their due date. However, arbitration providers are not required to disclose when they bill companies for fees, or when those fees are due. Moreover, companies often negotiate with the arbitration provider, usually without the knowledge of the employee or consumer, to extend the due date. This leaves workers and consumers in the dark about their potential remedies under SB 707 and creates further delays in the proceedings.

EXISTING LAW

SB 707 of 2019 added California Code of Civil Procedure section 1281.98 and 1281.99, which provides consumers and workers with procedural remedies when a company fails to pay fees within 30 days after their due date 1) To initiate an arbitration proceeding or (2) To continue an arbitration proceeding. These remedies include paying the company's share of the fees in order to proceed in arbitration or withdrawing from arbitration and taking their claim to court.

Regrettably, we've learned that since SB 707, companies are able to evade enforcement of the above protections because consumers and employees are not informed about when the fees are due, whether the due date is extended, or whether the fees are paid on time.

THIS BILL

This bill would specify that, when an arbitration provider assesses fees and costs to a party to the arbitration, they must issue the invoice to all parties. Such invoices must also indicate the amount that is due and the due date. This much-needed transparency ensures that workers and consumers can realize the promise of a speedy resolution of their disputes in the arbitral forum.

Furthermore, this bill introduces the following procedural safeguards 1) At the initiation of an arbitration proceeding and 2) During the pendency of the proceeding:

- 1) As soon as the worker or consumer completes their filing requirements to initiate their claim, the arbitration provider must specify the final due date of the initiation fees.
- 2) For fees and costs to continue arbitration, the arbitration provider must obtain the consent of all parties before extending the due date for fees and costs.

Even with these new safeguards, companies still enjoy significant advantages in the arbitration forum. Companies still have 30 days after the due date of their fees before they materially breach the arbitration provision. Moreover, companies can negotiate with arbitration providers for lenient due dates when they initially retain the provider's services. Finally, arbitration providers are incentivized to set a reasonable due date in order to maintain their ongoing relationship with the company.

The reasonable requirements of SB 762 add necessary clarity to the Forced Arbitration Protection Act in order to deter companies from using fee payment delays as a tactic to deny workers and consumers a speedy resolution of their disputes in the arbitral forum.

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