CALIFORNIA
EMPLOYMENT LAW LETTER

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ARBITRATION

San Francisco Giants narrowly recover right to compel arbitration on appeal

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In 2018, California employers will be subject to numerous additional legal obligations (and potential liabilities) based on the California Legislature's passage of a variety of employee-friendly laws. The new legal obligations placed on employers range from an outright prohibition on asking job applicants about their salary history, to strict limitations on when employers may conduct an inquiry into applicants' criminal history. Next year, California employers with 26 or more employees must also anticipate another minimum wage increase to $11 per hour, with the ultimate goal of reaching a statewide hourly minimum wage of $15 for all employers by 2022.

New and existing legal requirements make California fertile breeding ground for employment claims on a class action or single plaintiff basis. Typical employment lawsuits include violations of state wage and hour, discrimination, or harassment statutes as well as wrongful termination and retaliation claims. Moreover, the attorneys' fees and litigation costs associated with defending an employment claim are high. To make matters worse, California law severely limits an employer's right to recover the costs and fees incurred in defending against and prevailing on even meritless claims.

One of the few beacons of hope for California employers is the right to enter into an arbitration agreement with employees as a term and condition of new and continued employment. The benefits of arbitration are hardly up for debate. Some of the factors that make arbitration an attractive alternative to litigation include the ability to (1) limit public exposure from disputes, (2) curtail some of the costly formalities associated with civil lawsuits, (3) increase the likelihood that damages are reasonable and commensurate with the allegedly unlawful conduct, and (4) expedite the process of resolving disputes.

Recently, the San Francisco Giants organization was handed a tremendous blow when the San Francisco Superior Court denied its motion to compel arbitration in a wage and hour class action lawsuit filed by George Melendez, a security guard employed at AT&T Stadium. However, the team batted a thousand when it appealed that decision.

Trial court denies Giants' motion to compel arbitration

The primary dispute in the case centered on whether the Giants violated California's termination

WORKPLACE TRENDS

Survey finds pay more important than health benefits for most workers. A survey by the American Payroll Association shows that 63% of employees in the United States say that receiving higher wages is more important to them than having better health benefits. "A wage increase is easy for workers to understand," Mike Trabold, director of compliance risk for Paychex, said of the findings. "The value is clear and immediately apparent. In 2017, considering today's unpredictable regulatory environment, the same can't be said for better benefits." More than 34,000 employees responded to the 2017 "Getting Paid In America" survey.

U.S. job tenure down slightly. New research shows that the typical American worker stayed at a job just over five years last year, down slightly from the record high since 1983 set in 2014. Research from the Employee Benefit Research Institute found that the median tenure (midpoint, half above, and half below) for all wage and salary workers ages 25 or older with their current employers was 5.1 years in 2016, compared with the high since 1983 of 5.5 years in 2014 and the low of 4.7 years in 1998-2002.

Report finds employer-provided benefit costs vary sharply by industry. The cost of employer-provided healthcare and retirement benefits, measured as a percentage of pay, varies greatly by industry, with retirement benefit costs experiencing the greatest variation, according to research by Willis Towers Watson. The analysis shows that healthcare costs are substantial across all sectors, ranging from 10.4% of pay in the retail sector to 12.7% of pay in the oil, gas, and electric (OG&E) sector. The disparities among industries are more pronounced for retirement benefits, which include defined benefit, defined contribution, and postretirement medical programs. Total retirement benefits averaged 12% of pay in the OG&E sector compared with roughly 5.5% of pay in the healthcare, high-tech, general services, and retail industries.

Glassdoor names 25 top cities for jobs. Job site Glassdoor has announced a new report identifying what it calls the 25 best cities for jobs in 2017. The 25 cities are Pittsburgh, Pennsylvania; Indianapolis, Indiana; Kansas City, Missouri; Raleigh-Durham, North Carolina; St. Louis, Missouri; Memphis, Tennessee; Columbus, Ohio; Cincinnati, Ohio; Cleveland, Ohio; Louisville, Kentucky; Birmingham, Alabama; Detroit, Michigan; Minneapolis-St. Paul, Minnesota; Hartford, Connecticut; Oklahoma City, Oklahoma; Washington, D.C.; Seattle, Washington; Atlanta, Georgia; Baltimore, Maryland; Nashville, Tennessee; Milwaukee, Wisconsin; San Jose, California; Chicago, Illinois; Charlotte, North Carolina; and Dallas-Fort Worth, Texas. ✤

pay requirements under Section 201 of the Labor Code by allegedly failing to provide seasonal and project-based employees their final paychecks on their last day of work at the end of the baseball season or at the conclusion of special events held throughout the year (e.g., concerts, college games, and performances). Melendez alleged he was entitled to termination pay even though he was expected to return to work once baseball season resumed and for special events. The Giants disputed his claims, arguing that Section 201 doesn't require termination pay unless an employee is actually terminated or resigns.

Because there's an arbitration provision in the applicable collective bargaining agreement (CBA), the Giants argued that Melendez's claims under Section 201 (for termination pay) and Section 203 (for waiting time penalties) were subject to arbitration. The trial court disagreed and denied the Giants' motion to compel arbitration. Faced with the imminent threat that the organization would no longer be able to take advantage of its arbitration agreement, the Giants appealed the lower court's ruling.

Appellate court overturns ruling on federal preemption grounds

On October 17, 2017, the court of appeal narrowly overturned the trial court's order denying the Giants' motion to compel arbitration. Luckily for the Giants, Melendez is a union member, which allowed the court of appeal to grant the motion to compel arbitration on federal preemption grounds, even though the underlying agreement to arbitrate wasn't drafted broadly enough to cover the Labor Code claims he alleged in the lawsuit.

The arbitration provision in the CBA expressly states that it covers only claims related to a dispute between the employer, the union, and the employee involving the "interpretation, application, or violation" of the CBA. The arbitration provision doesn't specifically state that the agreement to arbitrate applies to any other employment-related claim between the parties. The appellate court therefore affirmed the lower court's ruling that the terms of the arbitration provision in the CBA weren't broad

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enough to cover the Labor Code claims. This portion of the appellate court's holding demonstrates why California employers must be vigilant and ensure that the language in any arbitration agreement includes all possible employment disputes.

However, the existence of the CBA meant that Melendez's Labor Code claims were still subject to arbitration on federal preemption grounds under Section 301 of the Labor Management Relations Act (LMRA). Applying California state and federal case law, the appellate court concluded that the only way for the parties to resolve the Section 201 and 203 claims would be to interpret the terms of the CBA.

Section 301 of the LMRA provides that "the substantive law governing union-management labor relations is exclusively a matter for arbitration under federal law." The appellate court found that the trial court was incorrect in holding that LMRA preemption wasn't appropriate because the dispute could be resolved without reference to the parties' CBA. Instead, the court of appeal held that an interpretation of the CBA was required because the primary dispute was whether the labor contract "provides for employment of security guards for only a single game . . . , season or other event, or whether the agreement contemplates extended employment from season to season, event to event, [or] year to year." For that reason alone, the Giants' motion to compel arbitration was granted. *George Melendez et al. v. San Francisco Baseball Associates, LLC* (California Court of Appeal, 1st Appellate District, 10/17/17).

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Bottom line

All California employers should view this case as a reminder of what is required to preserve the right to compel arbitration in employment disputes. It's clear that if the Giants hadn't been a party to the CBA, the court likely would have denied the motion to compel arbitration. Without the CBA, the motion would have been denied because the arbitration language was too narrow to include the alleged Labor Code claims asserted by Melendez.

This case serves as a warning that both union and nonunion employers should conduct routine audits of their arbitration agreements, with the advice of competent legal counsel, to ensure that all potential claims employees are likely to file will be subject to arbitration

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