

ALERT

U.S. Supreme Court Delivers Victory for Arbitration



The U.S. Supreme Court has ruled that federal law requires district courts to delay a lawsuit automatically while the parties appeal whether the claim should be taken to arbitration.

The June 23 decision in *Coinbase v. Bielski* is important to employers and all California businesses because the high court recognized that the benefits of arbitration could be lost altogether if litigation is allowed to proceed before a court determines first whether the case belongs in court at all.

The 5-4 decision said that the Federal Arbitration Act (FAA) requires district courts to automatically stay litigation while the parties appeal whether the claim should instead go to arbitration.

Impacts of Decision

Quoted in a Reuters news article, Katherine Minarik, Coinbase’s vice president for litigation, welcomed the ruling, saying it “recognizes that companies like Coinbase, as well as our customers, bear significant burdens when cases that belong in an arbitration process instead proceed in lengthy and expensive court proceedings.”

Importantly, the June 23 ruling is a blow to proponents of SB 365 (Wiener; *See U.S. Supreme Court: Page 8*)

Governor Signs State Budget Bill; Talks on Trailer Bills Continue



Governor Gavin Newsom signed the state budget bill this week, but many other components of the state spending plan must still come together.

The final agreement will be voted on by this weekend

and will reflect updated deals negotiated among legislative leaders and the Governor, as well as separate policy legislation included as sweeteners or urgent priorities.

The total budget tops \$310 billion and bridges an earlier-estimated shortfall of \$32 billion between projected revenues and programmed spending. Much of the solution to solve this shortfall was to eliminate or delay short-term spending promised from earlier budgets when surpluses ran in the tens of millions.

The budget plan will not dip into rainy day reserves, prudently saving those for any further economic slowdowns. Nor does the budget comprise any general tax increases.

Key legislation under consideration by the Legislature will include the Governor’s infrastructure streamlining package, extension of the film and television tax credit, and funding to re-start the Industrial Welfare Commission, which updates and adopts regulations on wages, hours of work and other workplace conditions.

Contact: Loren Kaye

Zero-Emissions Vehicle Conversions Rebate Aims to Spur In-State Production of New Parts



A California Chamber of Commerce-supported job creator bill that will benefit the

environment and create jobs in California passed the Assembly Natural Resources Committee this week with unanimous support.

SB 301 (Portantino; D-La Cañada Flintridge) incentivizes production of zero-emission vehicle parts in the state, increasing manufacturing and jobs, by offering a rebate for zero-emissions vehicle conversions.

Rebate for ZEV Conversions

The transportation sector is a major contributor to greenhouse gas emissions, and converting gas- and diesel-powered vehicles to zero-emissions vehicles (ZEV) can significantly reduce these emissions. This conversion process requires the production of new parts and components, such as electric motors, batteries, and charging infrastructure.

By offering a rebate for zero-emissions vehicle conversions, California can incentivize the production of these parts and components in the state, which will lead to increased manufacturing and job

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Labor Law Corner

Vacation Policy: Employer Has Latitude, But Beware of Illegal Impacts



Sharon Novak
Employment Law
Expert

Can we have different vacation policies for different worksites and for different groups in the same office?

Yes, California employers may establish different vacation policies among their employees.

Paid vacation is a discretionary employee benefit offered by employers. Because there are no laws requiring employers to provide paid vacations to employees, companies may decide who

is entitled to paid vacation leave, the amount of leave, and when vacation can be taken.

Different Policies

Companies can adopt different policies for different groups.

Employers are not required to offer the same amount of paid vacation to all employees or to treat employees the same. Companies can choose to apply the same policy to all employees or can offer different policies to different groups of employees or to individual employees.

Employers have the flexibility to establish different accrual rates or rules based on multiple factors. Common distinctions made by employers in their paid vacation policies are:

- Full-time vs. part-time employees.
- Regular vs. temporary employees.
- Exempt vs. non-exempt employees.
- Length of employment.

Companies also may use paid vacation to attract new employees or to incentivize and reward current employees.

For example, applicants may negotiate a higher vacation amount than is

provided in the company's general vacation policy, or a company might grant an additional week of paid vacation to reward the outstanding performance of an employee.

No Illegal Reason

Different vacation policies cannot be based on an illegal reason or have a disparate impact on protected groups.

In establishing distinctions between groups of employees in paid vacation policies, a company would violate discrimination laws if the vacation policy were based on a classification prohibited by law. A company cannot adopt different policies based on race, gender, sexual orientation, religion, age, nationality, or any other protected characteristic.

Companies also should be alert to vacation policies that have a disparate impact on certain groups. For example, agricultural workers who receive fewer vacation days than office workers may allege that they are being affected unfairly by the discretionary policy.

Different vacation policies are rarely

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International Trade

2023 Taiwan Trade Shows. Taiwan Trade Center, San Francisco. March 6–November 8, Taiwan and Online. (408) 988-5018.

Access Africa Now Webinar Series. U.S. Commercial Service. April 11–September 27. (512) 936-0039.

Export Growth in Africa — Go Online. National Association of District Export Councils. July 11, Online. nadec@usaexporter.org.

Trade Mission to Africa. Global Diversity Export Initiative. August 6–15, South

Africa, Ghana and Nigeria (optional stop). eve.lerman@trade.gov.

The Green Expo 2023. The Green Expo and International Environmental Congress of the Consejo Nacional de Industrias Ecologistas (CONIECO). September 5–7, Mexico City. 55-1087-1650.

EXIM 2023 Annual Conference. Export-Import Bank of the U.S. October 19–20, Washington, D.C. (800) 565-3946.

Smart City Expo World Congress (SCEWC). Smart City Expo World Congress. November 7–9, Barcelona, Spain. (704) 248-6875.

APEC CEO Summit 2023. National Center for APEC (Asia-Pacific Economic Cooperation). November 15–16, San Francisco. (206) 441-9022.

Next Alert: July 14

The Workplace

Update on Harmful Proposals as Legislature Heads for Summer Break



In Episode 179 of The Workplace podcast, CalChamber Helpline manager and employment law counsel Matthew

Roberts and Chris Micheli, of Aprea & Micheli, give an update on important labor and employment-related bills in the California Legislature that employers should keep an eye on, such as SB 616, which expands California's paid sick leave law; AB 524, which adds a new protected class under the Fair Employment and Housing Act; SB 399, which bans employers' speech; SB 365, which undermines arbitration; and SB 809, which prohibits consideration of conviction history in employment.

Legislative Deadlines

With just over three months left, we are just over the halfway point of this year's legislative session, Micheli says in kicking off the podcast. The Legislature will be heading into their summer recess in mid-July and will return in mid-August. When they return, there will be a five-week sprint to the end of the session on September 14. After this, the Governor will have until mid-October to decide whether to sign or veto the 1,000–1,100 bills sent to him.

SB 616

One bill that will have a big impact on employers is **SB 616 (Lena Gonzalez; D-Long Beach)**. Labeled a job killer by the CalChamber, this bill amends California's mandatory paid sick leave law.

About a decade ago, Assemblymember Lorena Gonzalez (D-San Diego) authored the bill that created California's three-day paid sick leave mandate. This year, Senator Lena Gonzalez (unrelated to Lorena), introduced SB 616, which more than doubles the number of paid sick leave days under the law, from three to seven, Micheli explains.

The bill came out of the state Senate on a party-line vote, but the business community is hoping that the state Assembly will add in some guardrails and some limitations, and not increase the number of paid sick leave days by as much, he says.

AB 524

Another important employment law-related bill being considered in the Legislature is **AB 524 (Wicks; D-Oakland)**. This CalChamber job killer bill adds a family caregiver status to the current 18 protected classes in the Fair Employment and Housing Act (FEHA), Micheli says.

One of the things that makes this bill so concerning to the employer community is its enforcement mechanism. Micheli explains that if an employer violates FEHA, not only are there attorneys' fees, injunctive relief, and compensatory damages, but even punitive damages are available.

"So anytime California in any way tries to amend or, in this case, add a new protected class to the FEHA statute, we really get quite concerned," he says.

A problem with the "family caregiver" status is how it's defined. Currently a family caregiver could encompass someone who contributes to the care of one or

more family members, as well as somebody that's called a "designated person." Undefined, however, is what "contributes" means exactly. Micheli points out that someone who brings dinner to an elderly neighbor once a week could fall under the caregiver definition.

"So unfortunately, when you add such a broad, and use undefined terms in the definition of this new, protected classification of family caregiver status, boy, what are we going to have? And what sort of litigation are we going to have?" Micheli asks.

SB 399

A third bill that employers should pay attention to is CalChamber job killer **SB 399 (Wahab; D-Hayward)**. This bill, Micheli says, basically precludes an employer from forcing employees to receive communications or to participate in any communications. Like AB 524, SB 399 uses vague terms and fails to define them. For example, the bill does not define what "participate" means.

The employer community needs clear guidelines, and these bills fail to provide that, Micheli points out.

"Even if you're going to impose a new burden or a new mandate on employers, at least make it as easy as possible to comply with. And this bill unfortunately, doesn't do that," he says.

SB 399 precludes employers from talking about religious or political matters. But under current law, employers already are prohibited from forcing employees to participate in political events. The bill also includes legislation and regulation, but, again, fails to define

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**CalChamber Member Feedback**

"CalChamber has undoubtedly contributed to the expansion and retention of the economic base in California by ensuring that elected officials are held accountable, and are responsive, to those creating jobs in their districts. I particularly appreciate the excellent work of the CalChamber Policy Team and their efforts against proposed job killer bills."

Leslie L. Melburg
Senior Partner
Nichols, Melburg & Rossetto Architects + Engineers

Mid-Year Mandatory Labor Law Poster Update



California employers are required to post 18 separate state and federal

employment notices in each business location and jobsite where employees can easily see and read them. Due to a rare mid-year update, employers must post two updated federal workplace notices.

For the last few years, employers have needed to update their postings only at the beginning of each year — with one exception being last October’s [Equal Employment Opportunity Commission \(EEOC\) poster update](#).

Due to new laws, however, two notices were updated recently, requiring employers to make updates to their own postings.

- First, in April 2023, the [Federal Minimum Wage notice](#) (applicable to all employers) was updated in response to the [Providing Urgent Maternal Protections \(PUMP\) for Nursing Mothers Act](#) that passed at the end of December 2022.

- Second, the EEOC updated its “[Know Your Rights](#)” poster to address the [Pregnant Workers Fairness Act](#), which went into effect on June 27, 2023.

Also of note is that the U.S. Department of Labor updated the [Family and Medical Leave Act \(FMLA\) poster](#), which all covered employers are required to display, as it summarizes the FMLA’s major provisions and tells employees how to file a complaint. Both the English and [Spanish](#) posters were last revised in April 2023; however, the previous two poster versions (April 2016 and February 2013) still fulfill the posting requirement, meaning that employers are still in compliance if they have the older version up in their workplace.

If, however, they preorder the July 2023 edition of [CalChamber’s convenient 28” x 46” all-in-one poster](#) combining the 18 separate state and federal employment notices that California employers must display — in English, Spanish and Simplified Chinese — employers will get not only the mandatory updated federal notices, but also an updated version of the FMLA poster.

Remember, although a recent law allows employers to distribute these [required notices via email](#), they **still are obligated to physically display posters in the workplace**, including where employees work remotely 100% of the time.

Notices aren’t the only thing being updated right now — the California Employment Development Department (EDD) is updating its [Paid Family Leave \(PFL\)](#) and [State Disability Insurance \(SDI\)](#) pamphlets by the end of June. Employers can [preorder these mandatory pamphlet updates](#). CalChamber also sells a [California Required Notices Kit](#), which includes the updated poster and pamphlets.

CalChamber members can read more about other recent and upcoming government form updates in [HRCalifornia Extra: What to Know About Expiring, Updated Government HR-Related Forms](#).

Not a member? Learn how to power your business with a [CalChamber membership](#).

Staff Contact: Katie Culliton

Job Creator Bill Offers Rebates for Zero-Emissions Vehicle Conversions

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creation in California, the CalChamber told committee members in a letter.

The production of components for conversions requires specialized skills and expertise, which will lead to the creation of high-paying, skilled jobs. Moreover, as more individuals convert their cars and trucks to zero-emission vehicles, there will be increased demand for these components, leading to increased job growth in the manufacturing sector, the CalChamber pointed out.

The increased production of these components will also lead to further innovation and technological advancement in the manufacturing sector, creating new opportunities for research and development.

Step Forward

“We believe that offering a \$4,000 rebate for converting gas- and diesel-powered vehicles to zero-emission vehicles would be a significant step forward in promoting manufacturing

and creating jobs here in California,” the CalChamber said. “SB 301 is a logical step in the right direction of our electrification transition, providing consumers with more options for electrification while also spurring job growth here in California.”

SB 301 will be considered next by the Assembly Appropriations Committee.

Staff Contact: Brady Van Engelen



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presented by **CalChamber**

The Capitol Insider blog presented by the California Chamber of Commerce offers readers a different perspective on issues under consideration in Sacramento.

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California Works

San Manuel Band of Mission Indians



This article is a part of a series of profiles of CalChamber member companies that are contributing to the state's economic strength and ability to stay competitive in a global economy. Visit [California Works](#) to learn more about this series and read past and future profiles.



The San Manuel Band of Mission Indians (SMBMI) is a federally recognized Indian tribe located on the San Manuel Indian Reservation near Highland, California.

San Manuel exercises its inherent sovereign right of self-governance and provides essential services for its citizens by building infrastructure, maintaining civil services, and promoting social, economic and cultural development.

As the indigenous people of the San Bernardino highlands, passes, valleys, mountains and high deserts, the Serrano people of San Manuel have called this area home time immemorial and are committed to remaining a productive partner in the San Bernardino region.

Tribal History

For generations, the Maara'yam (Serrano) Tribe has persevered through great change and extreme hardship. Long before the arrival of European settlers, their ancestors lived in harmony with the land in and between the southwestern Mojave Desert and Inland Empire region in what is now Southern California.

Contact with three different waves of European peoples and their governments led to the Tribe's forced removal from their vast ancestral territory and the near extermination of them as a people. This physical and cultural genocide has led to ongoing disconnection and disenfranchisement from their sacred spaces, culturally important plants/animals, the

remains of their ancestors, and their traditional clan-based interactions.

The Act of Relief for Mission Indians, passed in 1891, recognized the San Manuel Band of Mission Indians' inherent rights to self-govern as a sovereign nation. Following the establishment of the Reservation, the federal government



would continue to make decisions on the Tribe's behalf, dictating what they could and could not do as an independent nation.

In the 1960s and 1970s, nationwide protests strengthened relations between Native Americans and the federal government. Following a message by President Richard Nixon recommending a policy of self-determination for Indian Tribes in 1970, the Indian Self-Determination and Education Assistance Act was signed into law in 1975 allowing San Manuel and all federally recognized tribes to finally exercise their retained inherent right to self-governance.

The introduction of Tribal Govern-

ment gaming on the San Manuel Reservation in the mid-1980s brought about a more secure economy and enabled the Tribe to rebuild its governance capacity. With their government-recognized independence intact and their future in mind, they began to explore opportunities for new businesses, both on and off the Reservation.

Today, the San Manuel Reservation, once only 640 acres, covers more than 1,100 acres. The Maara'yam ancestral territory covers present-day Antelope Valley on the west, southwest Mojave Desert to the north, portions of San Gabriel and San Bernardino Mountains in the center, the Inland Empire north of the city of Riverside to the south, and the city of Twentynine Palms to the east.

Philanthropy

Yawa' — acting on one's beliefs — is a core value at San Manuel and serves as the inspiration

to protect ancestral lands and support its inhabitants. Since 2003, San Manuel has contributed more than \$300 million supporting neighboring communities in the Inland Empire and Indian Country through financial contributions for education, health and wellness, economic development, and cultural projects.

Helping Small Business

During the COVID-19 pandemic, San Manuel created a \$1 million Small Business Relief Fund as financial assistance to 50 small businesses throughout their ancestral territory and beyond. With the state's COVID-19 crisis and resulting Stay-at-Home Order, many businesses

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San Manuel Band of Mission Indians

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faced the reality of employee layoffs or the threat of permanent closure.

San Manuel’s financial assistance program granted a \$20,000 lifeline to each small business to help their business survive and thrive.

Education

Education is a core value, believing that knowledge is the doorway to enlightenment and helps all people to excel.

Contributions to community educational initiatives include:

- S.T.E.A.M. (Science, Technology, Engineering, Arts and Mathematics) programs.
- After-school programs.
- Scholarship programs.
- College access programs.
- Career readiness programs; and
- Community-based arts and music programming.

In addition to running cultural sessions and tribal government programs, SMBMI also funds a Serrano Language Revitalization Project (SLRP) with a mission to ensure the continuation of the Serrano language.

The SLRP supports community language revitalization efforts, developing materials such as a grammar book, dictionaries, educational multimedia resources, and apps. All the project’s efforts contribute to the goal of teaching tribal families to speak Serrano so it can be used in everyday communication.

Environmental Sustainability

SMBMI’s Environmental Department (SMED) strives to protect Tribal lands and resources on the San Manuel Reservation through unwavering stewardship and community outreach. The

Serrano have always been environmental stewards of natural resources, so the SMED incorporates traditional knowledge with modern technologies to implement an elite hybrid of best management practices.

Some significant resources incorporated into current SMED programs include air, water, soil erosion, and recy-



cling. As part of pollution prevention and native species preservation, the SMED manages an invasive species program and hazardous materials disposal program as well.

The Tribe is continuously creating a diverse energy portfolio consisting of innovative technology. From the use of

solar panels and electric vehicle charging stations to the creation of the Tribe’s own Utility Authority and participation in the Western Area Power Administration (WAPA), SMBMI is dedicated to energy self-sufficiency.

The Tribe also has created its own internal ordinances, practices, and policies that help ensure the protection of natural resources and the environment on the Reservation. These include an Environmental Protection Act, a Solid Waste Ordinance, and other directives.

Growth and Diversification

San Manuel is one of the largest private employers in San Bernardino County. In 2021, the Tribe opened Yaamava’ Resort & Casino, a 17-story luxury resort featuring 432 guest rooms and suites, an expansive pool area, an award-winning spa, and a state-of-the-art 2,800 seat theater.

The casino at Yaamava’ is the largest on the West Coast with more than 7,200 slots. Today, Yaamava’ is the only Four-Star and Five-Star-rated and AAA Diamond-rated entertainment destination in the Inland Empire.

In 2022, a governmental instrumentality of the Tribe, the San Manuel Gaming & Hospitality Authority, re-opened Palms Casino Resort in Las Vegas, marking a milestone as the first resort in Las Vegas fully owned and operated by a Native American tribe.

As part of the Tribe’s long-term diversification strategy, San Manuel recently acquired a portion of ownership interest in the Waldorf Astoria Monarch Beach Resort in Dana Point, California

Vacation Policy: Employer Has Latitude, But Beware of Illegal Impacts

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illegal. However, treating one group of employees more favorably than others may lower morale and cause resentment between the groups. Employees understand that working longer for a company may warrant more paid vacation. It may be harder to understand why employees in the Los Angeles office get more paid days off than those working in San Francisco.

Legal Requirements/Best Practices

Discretionary vacation policies are subject to legal requirements and best practices.

Although companies have considerable latitude regarding paid vacation policies, there are some limitations.

Legal Requirements

- Because California treats accrued

vacation time as wages, it cannot be forfeited or otherwise taken away.

- When employees separate from a company, they must be paid for any unused, accrued vacation time as part of their final paycheck.

Best Practices

• Employers should have a written vacation policy explaining accrual rates, eligibility criteria, and payout procedures. By committing your company to a written policy, you force yourself to clearly define the terms of the policy. This avoids uncertainty and miscommunication and sets expectations for employees.

- Employers can cap the amount of vacation time an employee can accrue if the cap is reasonable, and employees have been given sufficient opportunity to use their accrued vacation time. What constitutes a “reasonable cap” has not been

established by the courts or the Division of Labor Standards Enforcement (DLSE). Employers often set the accrual cap at 1.5 to 2 times the annual accrual rate.

Unlike many areas of employment, vacation policies aren’t heavily regulated by the state. California employers can establish different vacation policies for their employees so long as the differences are not based on illegal reasons or do not adversely affect a protected group. Ideally, if challenged, companies can explain the reasons they have chosen to adopt different policies for different groups.

Column based on questions asked by callers on the Labor Law Helpline, a service to California Chamber of Commerce preferred members and above. For expert explanations of labor laws and Cal/OSHA regulations, not legal counsel for specific situations, call (800) 348-2262 or submit your question at www.hrcalifornia.com.

Update on Harmful Proposals as Legislature Heads for Summer Break

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either of those terms, Micheli says.

Another problematic aspect of SB 399 is that it adds a new provision that the law is subject to the Private Attorneys General Act (PAGA), he tells Roberts.

SB 365

Another important employment law bill this year is CalChamber job killer **SB 365 (Wiener; D-San Francisco)**. The bill would undermine arbitration by automatically staying orders or judgments upon appeal, Micheli explains.

This bill arises from continuing efforts by the plaintiffs’ bar — employment

lawyers on the plaintiff side — and labor unions to limit the use of arbitration agreements in California. Similar bills have been vetoed in the past by Governor Jerry Brown.

Besides the poor policy, SB 365 is federally preempted, Micheli says. If this bill gets signed into law, it will be challenged and will likely be struck down by the federal courts.

SB 809

The last bill discussed on the podcast was **SB 809 (Smallwood-Cuevas; D-Los Angeles)**. This CalChamber job killer bill prohibits nearly every employer

from considering the conviction history of an applicant or an existing employee in employment decisions and imposes a cumbersome process on employers that are legally not allowed to hire individuals with certain convictions.

The Senate Judiciary Committee had significant concerns and made some tweaks before the bill was sent to the fiscal committee, where it is being held on the suspense file. The bill will no longer proceed any further this year, but it could be considered next January when the Legislature reconvenes for its second and final year of the two-year session, Micheli explains.

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D-San Francisco), a bill that proposes to allow litigation to proceed to court even if there is disagreement about whether the case is appropriate for arbitration. Opponents of SB 365, including CalChamber, which has tagged the bill as a Job Killer, strongly believe the ultimate goal of the measure is to severely restrict the use of arbitration agreements.

The ruling in *Coinbase* underscores growing judicial support for business in defending their right to use arbitration as a cost-effective means to resolve disputes.

On February 15, 2023 the Ninth Circuit Court of Appeals handed employers a victory in *Chamber of Commerce of the United States of America, et al. v. Bonta, et al.* The Ninth Circuit decision in the case invalidated California's AB 51 — a bill that attempted to preclude California employers from requiring arbitration agreements as a condition of employment.

No doubt the growing cost of defending litigation over arbitration — and losing — is going to quickly become a fiscal

nightmare for the state of California. For example, defending AB 51 in court already has likely cost the state — and taxpayers — hundreds of thousands of dollars.

Background

Abraham Bielski filed a class action lawsuit in federal court against Coinbase, an online cryptocurrency exchange platform, alleging that Coinbase failed to replace funds fraudulently taken from users' accounts. When a user signs up for Coinbase, they agree to terms and conditions that include an arbitration dispute resolution provision.

In response to the class action lawsuit, Coinbase filed a motion to arbitrate the claims under the arbitration dispute provision. The district court denied the motion, thereby keeping the litigation in the courts. Coinbase asked for a stay of the litigation while they appealed the denial of their motion to arbitrate. The district court and then the Ninth Circuit Court of Appeals declined to stay the litigation.

The question before the U.S. Supreme Court was whether Section 16(a) of the

FAA, which allows for an interlocutory appeal of rulings on the arbitrability of a case, required stays of litigation while the question of arbitrability was answered by the appellate courts.

Section 16(a) neither authorizes nor prohibits automatic stays pending this type of appeal. Other circuit courts have held this exact type of appeal would stay the litigation, but the Ninth Circuit differed. Now the U.S. Supreme Court has resolved the split in favor of staying the litigation, saying the common practice of doing so in circuits other than the Ninth reflects common sense.

"If the district court could move forward with pre-trial and trial proceedings while the appeal on arbitrability was ongoing, then many of the asserted benefits of arbitration (efficiency, less expense, less intrusive discovery, and the like) would be irretrievably lost — even if the court of appeals later concluded that the case actually had belonged in arbitration all along," the U.S. Supreme Court stated.



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