CALIFORNIA EMPLOYERS GRANTED SLIGHT REPRIEVE FROM ONEROUS ARBITRATION FEE PAYMENT REQUIREMENTS

Date: 21 August 2025

US Labor, Employment, and Workplace Safety Alert

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On 11 August 2025, California employers scored some relief from a rigidly applied arbitration statute with the California Supreme Court's highly anticipated decision in *Hohenshelt v. Superior Court* (*Hohenshelt*).

In *Hohenshelt*, the Court addressed California Code of Civil Procedure section 1281.98 (the Payment Statute), the controversial 2019 amendment declaring that an employer's untimely payment of arbitration fees waives the employer's right to arbitrate.[1] Since enactment, California courts have frequently applied the law strictly without exceptions, even, for example, when counsel declared that payment was six days late because counsel was "caught in the throes of a natural disaster."[2]

While not as far-ranging as employers had hoped, *Hohenshelt* does provide some welcome relief. Specifically, the Court held the Payment Statute was only enacted to deter strategic non-payment of arbitration fees. The Court went on to hold that the Payment Statute does not demand waiver if a late payment is excused by:

- Code of Civil Procedure Section 473 (mistake, inadvertence, or excusable neglect);
- Civil Code section 3275 (providing relief upon performance "except in case of a grossly negligent, willful, or fraudulent breach"); or,
- Civil Code section 1511 (excusing breach when performance of the contractual obligation would be impossible, illegal, or impracticable).

Finally, the Court held that the Payment Statute is, in light of the exceptions above, not preempted by the Federal Arbitration Act.[3]

This is a win for California employers. With the equitable measures read into the Payment Statute by the Court, employers are now free from certain punitive applications, so long as they can demonstrate that the failure to timely remit arbitration fees is explained by a "reasonable excuse" or show they acted in good faith.

Some observers, however, including Justice Corrigan in a strong dissent, may lament the Court's unwillingness to find FAA preemption.[4] This issue, perhaps, will be reviewed by the United States Supreme Court. However, the *Hohenshelt* holding should not come as a surprise. It is consistent with the California Supreme Court's prior arbitration jurisprudence and general trend to uphold California statutes that test the FAA's equal treatment principle.

Post-*Hohenshelt*, employers must remain vigilant to timely make payments, preserve their right to arbitrate, and enforce arbitration agreements that are commonly their first line of defense against class and representative

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actions. That is unchanged. What *Hohenshelt* acknowledges, though, is common sense: that well-intentioned employers should not forfeit legal rights to arbitrate simply because mistakes or uncontrollable events (like a natural disaster) occur.

FOOTNOTES

[1] The Payment Statute requires the drafting party in employment or consumer arbitrations to pay certain fees and costs within 30 days of the due date or risk waiver of the right to compel arbitration.

[2] *See Colon-Perez v. Security Industry Specialists*, 108 Cal. App. 403, 421, fn. 12 (2025).

[3] The Court expressly did not consider what arbitration agreement language is sufficient to overcome the default rule that state procedural rules apply and, instead, sidestep the Payment Statute by invoking the FAA's procedure rules.

[4] The FAA preempts state laws that discriminate against arbitration agreements and treat them differently than other contracts.

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