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Labor and Employment Alert: New Law Enshrines the Right of California Employees to Have Their Claims Heard Only in California Courts

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CLIENT ALERT | 9.30.2016

California continues to expand its Labor Code. On September 25, 2016, California enacted a law that generally protects employees from having to adjudicate in other states any employment claims arising in California. The law's author explained that "a worker who lives and works in California should *never* be forced to travel to a different state to exercise rights she has under California law." (Emphasis in original.)

The new Section 925 of the Labor Code prohibits an employer from requiring an employee who primarily resides and works in California, as a condition of employment, to (1) agree to a provision that would require the employee to adjudicate outside of California a claim arising in California, or (2) deprive the employee of the substantive protection of California law with respect to a controversy arising in California. "Adjudication" as used here includes both litigation and arbitration.

The law makes any contractual provision that violates these prohibitions voidable, upon request of the employee, and it applies to contracts entered into, modified, or extended on or after January 1, 2017. A dispute over a voided provision must be adjudicated in California under California law. Employees are entitled to injunctive relief, and courts are authorized to award reasonable attorney's fees. As has been the case with other provisions in the Labor Code, the potential for attorney's fees is likely to spur litigation.

One issue that drove this legislation was a concern over unequal bargaining power between the employer and employee in negotiating employment agreements. So Section 925 provides an exception for when the employee is represented by counsel. Thus, the new law does not apply to a contract with an employee who is in fact individually represented by counsel in negotiating the terms of an agreement to designate the venue or forum in which a controversy arising from the employment contract may be adjudicated or the choice of law to be applied.

Choice-of-venue and choice-of-law provisions are common in employment and separation agreements. Practically speaking, Section 925 essentially bans the use of agreements entered into after January 1, 2017, that require California employees to litigate or arbitrate an employment-related dispute in the employer's home state or that apply laws other than California law. Beginning next year, employers should prepare employment agreements for California employees to comply with Section 925. To that end, contact your Vorys lawyer if you have questions about Section 925's application to your employment agreements.