

CLIENT ALERT

Federal Courts Block Implementation of Two New California Statutes to Kick Off the New Year

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Two separate federal court judges issued temporary restraining orders barring implementation of controversial statutes passed last year by the California Legislature.

AB 51 - Restrictions on Employer Use of Mandatory Arbitration

On December 30, 2019, District Judge Kimberly Mueller in Sacramento issued a temporary restraining order halting enforcement of AB 51, which broadly prohibits California employers from requiring that an employee agree to arbitrate claims arising under California state employment laws. AB 51 may well be preempted by the Federal Arbitration Act, which is the principal theory supporting a lawsuit filed by business groups including the US Chamber of Commerce to prevent its enforcement. *Chamber of Commerce v. Becerra, et al.*, No. 2:19-cv-02456-KJM-DB (E.D. Cal. Dec. 30, 2019). In granting plaintiffs' request for a temporary restraining order, Judge Mueller found that the "plaintiffs have raised serious questions regarding whether the challenged statute is preempted by the Federal Arbitration Act as construed by the United States Supreme Court." The temporary restraining order will remain in effect at least until a hearing on the plaintiffs' motion for a preliminary injunction, currently set for January 10, 2020.

AB 5 - California's "ABC" Test for Independent Contractors

The next day, a federal district court in San Diego granted plaintiffs' motion for a temporary restraining order against implementation of a portion of AB 5, a new California statute that broadly restricts the ability of California employers to classify workers as independent contractors, in a case brought by trade associations representing the motor carrier industry. *California Trucking Ass'n v. Becerra, et al.*, No. 3:18-cv-02458-BEN-BLM (S.D. Cal. Dec. 31, 2019). In his decision, District Judge Roger Benitez found that AB 5's "ABC test" for independent contractor status "is likely preempted by the [Federal Aviation Administration Authorization Act]," which prohibits any state from enacting or enforcing a law state laws relating "to a price, route or service of any motor carrier ... with respect to the transportation of property." Federal Aviation Administration Authorization Act, 49 U.S.C. 40101 (1994) ("FAAA"). AB 5 would effectively force trucking companies to reclassify truck owner-operators as employees, rather than independent contractors, because, contrary to the "ABC test" codified in AB 5, "drivers perform work *within* 'the usual course of the [motor carrier] hiring entity's business,' [and so] drivers will never be considered independent contractors under California law." The court concluded that, at the TRO stage, plaintiffs had shown that they are likely to succeed on the merits of their FAAA preemption claim. *California Trucking Ass'n* at *3.

The court's opinion is limited to motor carriers and has no impact on the remainder of AB 5, which took effect on January 1, 2020. A hearing on plaintiffs' request for a preliminary injunction is scheduled for January 13, 2020.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Thomas P. Gies

Partner – Washington, D.C.

Phone: +1 202.624.2690

Email: tgies@crowell.com

Ira M. Saxe

Partner – New York

Phone: +1 212.895.4230

Email: isaxe@crowell.com

Suzanne E. Rode

Counsel – San Francisco

Phone: +1 415.365.7276

Email: srode@crowell.com

Jillian Ambrose

Associate – Washington, D.C.

Phone: +1 202.624.2710

Email: jambrose@crowell.com