



# Pay Your California Arbitration Fees On Time – Or Else!

Insights

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When it comes to paying your arbitration fees in whole and on time, the stakes for California employers just got more serious. Under legislation just signed by Governor Newsom, a drafting party that fails to pay arbitration fees and costs in employment or consumer disputes is subject to some fairly significant ramifications. They include not being able to compel arbitration and being forced back into court. Did that get your attention? Read on to get the full details.

## Rationale for the Bill – And the Real Story

At first blush, the policy rationale behind [SB 707](#) may seem fairly straightforward. As the author stated in support of the legislation:

“SB 707 ensures that individuals who have been forced to submit to mandatory arbitration to resolve an employment or consumer dispute would be provided with procedural options and remedies under this bill when a company stalls or obstructs the arbitration proceeding by refusing to pay the required fees.”

However, like most legislation, the background is more complicated. It involves high-profile disputes in recent years over the entire issue of arbitration agreements in the employment context.

The pivotal event that led to this legislation? Employers scored a big victory last year in the U.S. Supreme Court’s [\*Epic Systems v. Lewis\*](#) case. The Court relied on the Federal Arbitration Act (FAA) to uphold class action waivers contained in arbitration agreements. It rejected an argument that such waivers violate the National Labor Relations Act.

Plaintiffs’ attorneys responded by banding together to file hundreds, if not thousands, of individual arbitration cases against employers. In California, where employers are required to pay for the entire costs of arbitration, that can be a costly proposition.

## The Details

SB 707, signed by Governor Newsom on October 13, 2019, provides that any drafting party that fails to pay the fees necessary to commence or continue arbitration within 30 days after such fees are due is held to have materially breached the agreement and is in default.

Next, SB 707 provides employees with a number of remedies in the event of such a breach. Most significantly, the employee can remove the matter to court or move to compel the arbitration. In the

event that the drafting party fails to pay the fees or costs necessary to continue an arbitration currently in progress, there are a number of options. The employee can move the matter to court, seek a court order compelling the payment of the fees, continue the arbitration and permit the arbitrator to seek collection of their fees, or pay the costs and fees and seek them from the drafting party at the conclusion of the arbitration regardless of the ultimate outcome. Whew!

But that's not all. Presumably to deter drafting parties from failing to pay arbitration costs and fees in a timely manner, SB 707 imposes mandatory monetary sanctions on any drafting party found to be in default of an arbitration agreement for this failure. It further permits the court or arbitrator to impose additional evidentiary, terminating, or contempt sanctions. These include an "evidence sanction" that prohibits the drafting party from conducting discovery, and a "terminating sanction" that strikes out pleadings by the drafting party or issues a default judgment against the drafting party.

Employer representatives expressed concerns regarding the actions or omissions that could qualify as a "material breach" and trigger such damaging consequences. For example, employer groups argued that a material breach could be found even if only a small portion of the fees or costs were not paid. Employers with only nominal violations would be liable for the same list of punishments as a company that intentionally withheld the entire payment in an effort to delay the arbitration. Ultimately, however, Governor Newsom was not swayed by these arguments and signed SB 707 into law.

### **What's Next?**

SB 707 goes into effect on January 1, 2020. The advice for California employers is fairly simple – pay your arbitration fees and costs in whole and on time. The stakes are just too high if you don't. So now when you get those pesky reminders from your employment law counsel about paying your arbitration fees on time, you'll know it's not just to be annoying. It's to preserve your right to arbitration and to avoid all of the other numerous potential sanctions set forth in SB 707.

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**Benjamin M. Ebbink**

Partner

916.210.0400

Email