



california supreme court waters down— but does not extinguish—harsh arbitration fee law

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MSK Client Alert

August 25, 2025

California Code of Civil Procedure section 1281.98 establishes that employers who draft and maintain arbitration agreements are responsible for paying fees and costs to an arbitrator, and must do so “within 30 days after the due date,” which is the date of the receipt of the invoice. *See Cal. Code. Civ. Proc.* § 1281.98, subds. (a)(1-2). Failure to pay any invoice in a timely manner leads to a waiver of the right to compel the employee to proceed with that arbitration, allowing the employee to pursue their claim in court. *See Cal. Code. Civ. Proc.* § 1281.98, subds. (b)(1-2).

In *Hohenshelt v. Superior Court*, 2025 WL 2302229 (Aug. 11, 2025), the California Supreme Court examined this statute and arguments as to whether or not it was preempted by the Federal Arbitration Act (“FAA”). In *Hohenshelt*, an employee, a former sanitation employee of Golden State Foods Corporation, filed suit against his former employer, alleging various Labor Code violations and other retaliation claims. Golden State moved to compel arbitration, which was granted, and arbitration was commenced through JAMS. *Id.* Golden State failed to pay two invoices, one on July 29, 2022 and another on August 29, 2022, and plaintiff filed a motion electing to pursue his claims in court due to Golden States’ “default of the arbitration.” *Id.* While the trial court denied this motion, the Court of Appeals reversed, holding that the invoices were due upon receipt, Golden State had materially breached the arbitration agreement **and** that the FAA did not preempt section 1291.98, thus reversing the Trial Court’s order and sending the case back to the court system.

On review, the California Supreme Court agreed with the Court of Appeals and held that the FAA did not preempt section 1281.98. While the Court noted that section 1281.98 had been interpreted in a strict manner by multiple courts, it held that longstanding statutes, such as Civil Code section 3275, allowed courts to prevent unjust forfeitures of contractual rights in situations where the failure

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to comply with the contract was not grossly negligent, willful, or fraudulent. *Id.* The Court did not believe that section 1281.98 was meant to limit the operation of Civil Code section 3275 or other similar statutes which provided relief in similar situations.

The California Supreme Court also examined Golden States' arguments and found them unpersuasive. First, the Court did not believe that section 1281.98 uniquely discriminated against arbitration agreements as, despite being due upon receipt and not upon the services being performed, the parties could statutorily mutually agree to an extension, allowing the parties to retain flexibility. Second, the Court did not agree that the case-by-case factual determination as to whether or not a contractual obligation was substantially performed uniquely penalized arbitration agreements, as case-by-case determinations of good faith have always been held to be a necessary condition to a finding of substantial performance. Third, the Court disagreed that section 1281.98 interfered with the fundamental aspects of arbitration by imposing procedural rigor. Finally, the Court did not find that section 1281.98 went against the spirit of arbitration by delaying claims, noting that compliance with section 1281.98, or even a good faith effort to comply with section 1281.98, would have prevented the delay.

Based on this reasoning, the California Supreme Court held that section 1281.98 was not preempted by the FAA. Nonetheless, the Court confirmed that section 1281.98 could not "displace background statutes permitting relief to a breaching party in certain circumstances," thus reversing the Court of Appeal's order and remanding the case for consideration of whether or not Golden States' failure was excusable.

For employers, the *Hohenshelt* holding is a reminder that arbitration fees need to be paid in a timely manner to avoid any risk of abandoning the right to arbitration. Because each arbitration administrator maintains different procedures for initiating arbitration, a close eye must be kept on each arbitration to ensure those fees and costs are paid within 30 days of the set due date. Legal guidance on whether or not a failure to make a payment was "willful" or "in good faith" will likely come over the coming months, but employers who miss the deadline will likely be met with extended disputes as plaintiffs attempt to bring their cases back to the court system. While failing to pay on time is not a death knell, the California Supreme Court's narrow holding likely signals that any failures to comply with payment deadlines will be met with significant scrutiny.