

AMENDED IN ASSEMBLY APRIL 30, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 465

Introduced by Assembly Member Roger Hernández

February 23, 2015

An act to add Section 925 to the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 465, as amended, Roger Hernández. Contracts against public policy.

Existing law declares that negotiation of terms and conditions of labor should result from voluntary agreement between employer and employee. Existing law provides that any person who coerces or compels any other person to enter into an agreement, written or verbal, not to join or become a member of any labor organization, as a condition of securing employment or continuing in employment, is guilty of a misdemeanor.

This bill would ~~require~~ *prohibit any person from requiring another person, as a condition of employment, to agree to the waiver of any legal right, penalty, forum, or procedure for specified any employment law violations to be knowing, voluntary, and in writing.* ~~violations.~~ The bill would prohibit ~~such a waiver from being made as a condition of employment~~ *a person from threatening, retaliating against, or discriminating against another person based on a refusal to agree to such waiver*, and would provide that any such waiver required from an employee or potential employee as a condition of employment or continued employment is unconscionable, against public policy, and

unenforceable. *The bill would require that any waiver of a person’s employment rights be knowing and voluntary and in writing, and expressly not made as a condition of employment. The bill would provide that a person seeking to enforce a waiver has the burden of proof to show that the waiver was knowing and voluntary. The bill would apply to any waiver agreement entered into on or after January 1, 2016, and would impose a \$10,000 penalty against the employer for each violation of its provisions, with the penalty moneys and reasonable attorney’s fees awarded to the prevailing claimant.*

Vote: majority. Appropriation: no. Fiscal committee: no.
 State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. (a) The Legislature finds and declares that it is*
 2 *the policy of the State of California to ensure that all persons have*
 3 *the full benefit of the rights, penalties, remedies, forums, and*
 4 *procedures established in the Labor Code, and that individuals*
 5 *not be deprived of those rights, penalties, remedies, forums, or*
 6 *procedures through the use of involuntary or coerced waivers.*

7 *(b) It is the purpose of this act to ensure that a contract to waive*
 8 *any of the rights, penalties, remedies, forums, or procedures under*
 9 *the Labor Code, including any provision that has the effect of*
 10 *limiting the full application or enforcement of any right, remedy,*
 11 *forum, or procedure available under the Labor Code, is a matter*
 12 *of voluntary consent, not coercion.*

13 *SEC. 2. Section 925 is added to the Labor Code, to read:*

14 *925. (a) A person shall not require another person to waive*
 15 *any legal right, penalty, remedy, forum, or procedure for a*
 16 *violation of any provision of this code, as a condition of*
 17 *employment, including the right to file and pursue a civil action*
 18 *or complaint with, or otherwise notify, the Labor Commissioner,*
 19 *state agency, other public prosecutor, law enforcement agency,*
 20 *or any court or other governmental entity.*

21 *(b) A person shall not threaten, retaliate, or discriminate against*
 22 *another person on the basis that the other person refuses to waive*
 23 *any legal right, penalty, remedy, forum, or procedure for a*
 24 *violation of this code, including the right to file and pursue a civil*
 25 *action or complaint with, or otherwise notify, the Labor*

1 Commissioner, state agency, other public prosecutor, law
2 enforcement agency, or any court or other governmental entity.

3 (c) Any waiver of any legal right, penalty, remedy, forum, or
4 procedure for a violation of this code, including the right to file
5 and pursue a civil action or complaint with, or otherwise notify,
6 the Labor Commissioner, state agency, other public prosecutor,
7 law enforcement agency, or any court or other governmental entity
8 shall be knowing and voluntary and in writing, and expressly not
9 made as a condition of employment.

10 (d) Any waiver of any legal right, penalty, remedy, forum, or
11 procedure for a violation of this code that is required as a condition
12 of employment shall be deemed involuntary, unconscionable,
13 against public policy, and unenforceable. Nothing in this
14 subdivision shall affect the enforceability or validity of any other
15 provision of the contract.

16 (e) Any person who seeks to enforce a waiver of any legal right,
17 penalty, remedy, forum, or procedure for a violation of this code
18 shall have the burden of proving that the waiver was knowing and
19 voluntary and not made as a condition of employment.

20 (f) This section shall apply to any agreement to waive any legal
21 right, penalty, remedy, forum, or procedure for a violation of this
22 code, including an agreement to accept private arbitration, entered
23 into, altered, modified, renewed, or extended on or after January
24 1, 2016.

25 (g) In addition to any other remedies available, a person who
26 violates this section is liable for a civil penalty not exceeding ten
27 thousand dollars (\$10,000) per individual for each violation of
28 this section and reasonable attorney's fees.

29 SECTION 1. Section 925 is added to the Labor Code, to read:

30 ~~925. (a) Any waiver of any legal right, penalty, forum, or~~
31 ~~procedure for a violation of any provision of this code shall be~~
32 ~~knowing, voluntary, and in writing. A waiver shall not expressly~~
33 ~~be made as a condition of employment.~~

34 ~~(b) Any waiver of any legal right, penalty, forum, or procedure~~
35 ~~for a violation of any provision of this code that is required for an~~
36 ~~employee or potential employee as a condition of employment or~~
37 ~~continued employment shall be deemed involuntary,~~
38 ~~unconscionable, against public policy, and unenforceable.~~

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