

AMENDED IN SENATE AUGUST 19, 2015

AMENDED IN SENATE JULY 2, 2015

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 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 any employment law violations. The bill would prohibit 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, not prohibited by state or federal law, 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 authorize award of reasonable attorney’s fees awarded to the prevailing claimant. The bill would except specified self-regulatory organizations and specified employees from the application of its provisions. The bill would provide that its provisions are severable.~~

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 not
 5 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 violation
 16 of any provision of this code, as a condition of employment,
 17 including the right to file and pursue a civil action or complaint
 18 with, or otherwise notify, the Labor Commissioner, state agency,
 19 other public prosecutor, law enforcement agency, or any court or
 20 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

1 any legal right, penalty, remedy, forum, or procedure for a violation
2 of this code, including the right to file and pursue a civil action or
3 complaint with, or otherwise notify, the Labor Commissioner, state
4 agency, other public prosecutor, law enforcement agency, or any
5 court or other governmental entity.

6 (c) Except for any legal right, penalty, forum, or procedure that
7 state or federal law prohibits from being waived, any waiver of
8 any legal right, penalty, remedy, forum, or procedure for a violation
9 of this code, including the right to file and pursue a civil action or
10 complaint with, or otherwise notify, the Labor Commissioner, state
11 agency, other public prosecutor, law enforcement agency, or any
12 court or other governmental entity shall be knowing and voluntary
13 and in writing, and expressly not made as a condition of
14 employment.

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

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

25 (f) This section shall apply to any agreement to waive any legal
26 right, penalty, remedy, forum, or procedure for a violation of this
27 code, including an agreement to accept private arbitration, entered
28 into, altered, modified, renewed, or extended on or after January
29 1, 2016.

30 (g) In addition to *injunctive relief* and any other remedies
31 available, ~~a person who violates this section is liable for a civil~~
32 ~~penalty not exceeding ten thousand dollars (\$10,000) per individual~~
33 ~~for each violation of this section and court may award a plaintiff~~
34 ~~enforcing his or her rights under this section~~ reasonable attorney's
35 fees.

36 (h) *This section does not apply to a person registered with a*
37 *self-regulatory organization as defined by the Securities Exchange*
38 *Act of 1934 (15 U.S.C. Sec. 78c) or regulations adopted under*
39 *that act pertaining to any requirement of a self-regulatory*
40 *organization that a person arbitrate disputes that arise between*

1 *the person and his or her employer or any other person as specified*
2 *by the rules of the self-regulatory organization.*

3 *(i) This section shall not apply to an employee who is*
4 *individually represented by legal counsel in negotiating the terms*
5 *of an agreement to waive any legal right, penalty, remedy, forum,*
6 *or procedure for a violation of this code.*

7 *(j) The provisions of this section are severable. If any provision*
8 *of this section or its application is held invalid, that invalidity shall*
9 *not affect other provisions or applications that can be given effect*
10 *without the invalid provision or application.*

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