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California's "30-Day Arbitration Fee" Rule After Hohenshelt

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Practices: Litigation

In *Hohenshelt v. Superior Court*, 18 Cal.5th 310 (2025), the California Supreme Court interpreted California's arbitration fee-payment statute (SB 707, Code Civ. Proc. §§ 1281.97–1281.99). The law requires the drafting party, usually the employer or business, to pay arbitration fees within 30 days of the invoice due date in employment and consumer arbitrations. If payment is late, the statute labels this a “material breach,” allowing the employee or consumer to exit arbitration, return to court, and seek fees and sanctions. Courts had been applying this very rigidly, which created serious risk for businesses, especially in mass arbitrations where dozens or hundreds of invoices hit at once.

For many companies, the problem is not the number “30” itself, but what happens when mass arbitration hits. A single campaign can generate hundreds or even thousands of individual demands, each with its own invoice, effectively compressing millions of dollars of fees into the same 30-day window. Those invoices have to be located, checked, routed through legal and finance, approved, and paid within ordinary A/P systems that were never designed for emergency, high-volume litigation spend. At the same time, some filings may look ineligible or defective, so there is real hesitation about simply paying everything on sight.

The Supreme Court did two important things. First, it held that the statute is not preempted by the Federal Arbitration Act. The fee-payment rules regulate post-agreement conduct and are intended to make arbitration happen, not to disfavor arbitration agreements themselves. Second, it rejected an automatic “any delay equals forfeiture” approach. Instead, courts must apply California contract principles that allow relief from forfeiture when nonpayment is not willful, grossly negligent, or fraudulent. In other words, a short or inadvertent delay, supported by evidence of good-faith efforts, should not automatically cost the business its right to arbitrate or trigger the harshest sanctions.

The Court also confirmed that the 30-day period is a default; parties can agree in their arbitration clauses to different payment deadlines that better match real-world processing times.

For mid- to large-sized companies, SB 707 still matters. It remains a powerful tool for employees and consumers, and it is central to the current mass arbitration playbook. But *Hohenshelt* acknowledged that excusable neglect and good-faith efforts could mitigate the consequences of a delay. The key battleground will be factual: Was the delay intentional or reckless, or was it an understandable slip in a reasonably designed system? This takes some of the risk out of minor administrative mistakes; on the other hand, broad FAA-preemption attacks on SB 707 are now much less promising for corporate defendants.

Practically, businesses with California exposure should do three things. First, revisit arbitration clauses that might be governed by California law and consider specifying realistic fee-payment deadlines and clear invoicing instructions. Second, build robust internal controls for handling arbitration invoices: centralized intake, defined approval workflows, backup procedures, and documentation explaining any delay. Third, revisit mass-arbitration strategy with these new guardrails in mind. Plaintiffs still have leverage, but defendants that can show disciplined processes and non-willful delay will be better positioned to keep cases in arbitration and resist efforts to pivot back to court. For foreign headquarters overseeing California subsidiaries, this is a good moment to check whether group-wide templates and local payment practices actually align with SB 707 as clarified in Hohenshelt.

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