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California Courts Issue Reminder of Strict Requirement to Pay Arbitration Fees on Time

By [Megan Shaked](#)

At the beginning of 2022, two sections were added to the California Arbitration Act specifying that a failure to timely pay arbitration fees constitutes a material breach of the arbitration agreement. In the event of a material breach, a party subject to arbitration can withdraw the claims from arbitration to proceed in court and seek other sanctions. Last month, the California Court of Appeal in *De Leon v. Juanita's Foods* confirmed that the new law is a bright-line rule and that courts do not have discretion to deviate from a finding of material breach. 

California Civil Procedure Code Sections 1281.97 and 1281.98 require employers seeking to compel an employee's dispute into arbitration to timely pay the fees or costs to initiate and to continue arbitration proceedings. If the employer does not pay the fees/costs required within 30 days after the due date, the employer is in material breach of the arbitration agreement, is in default of the arbitration agreement, and waives its right to compel the employee to proceed with that arbitration.

At that point, the party being compelled into arbitration has a few options. The employee is permitted, though not required, to withdraw the claim from arbitration and proceed in court. The employee can seek attorney's fees and costs associated with the abandoned arbitration proceeding, as well as sanctions.

Alternatively, the employee may continue the arbitration proceeding, notwithstanding the late payment. Even if an employee continues in arbitration, the arbitrator can impose appropriate sanctions, including recovery of attorney's fees and costs, as permitted.

In *De Leon v. Juanita's Foods*, although the employers timely paid the fees to initiate arbitration, one employer failed to pay a subsequent invoice within 30 days. De Leon then filed a motion to vacate the order compelling arbitration, which was granted, and proceeded with his claims in court. Juanita's Foods argued that the court should have considered factors beyond the late payment, such as whether the late payment delayed arbitration proceedings or prejudiced De Leon to determine whether it had materially breached the arbitration agreement. The Court of Appeal did not agree.

The Court of Appeal found that the trial court correctly declined to consider any additional factors and that the late payment itself constitutes a material breach. Section 1281.98 establishes a bright-line rule that a drafting party's failure to pay arbitration fees within 30 days after the due date is a material breach of the arbitration

agreement. There was nothing in the statute granting the trial court discretion to consider factors such as prejudice or delay caused by the late payment. This decision is consistent with another California Court of Appeal decision reaching the same conclusion regarding section 1281.97, which addresses timely payment of fees to initiate arbitration.

This is a reminder for employers seeking to proceed with arbitration to timely pay all fees for that arbitration. The California courts have spoken that both sections 1281.97 and 1281.98 provide no discretion for consideration of factors that may explain a late payment and that the rules for failing to timely pay arbitration fees will be strictly applied.

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