

# California Supreme Court Grants Relief To Employers For Late Arbitration Fees

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October 2, 2025

The California Supreme Court recently granted employers a modicum of relief from the harsh consequences of an employer's failure to timely pay required arbitration fees within the 30-day deadline imposed by California Code of Civil Procedure section 1281.98 ("Section 1281.98").

## Section 1281.98 of the California Arbitration Act

In 2019, the California legislature (Senate Bill 707) enacted Section 1281.98 to address perceived concerns that employers were avoiding or significantly delaying the arbitration of employment disputes by simply not paying the arbitration fees as requested by the arbitration service provider. Section 1281.98—which applies only to employment and consumer arbitrations under the California Arbitration Act—automatically deems an employer's failure to pay the fees required for the commencement or continuation of arbitration within 30 days of the payment's due date a "material breach" of the arbitration agreement, which allows the employee to unilaterally move the case to court instead of arbitration and to seek sanctions, costs and attorneys' fees against the employer.

Most California courts have construed this statute strictly, holding that an employer's delay in payment of arbitration fees—regardless of intention or mistake—resulted in a loss of arbitral rights. For example, in [\*Doe v. Superior Court of the City and County of San Francisco\*](#), the First District Court of Appeal found that payment of the arbitration fees was late even though the fees were mailed to the arbitrator *prior* to the deadline, but arrived *two days* after the deadline. In [\*Cvejic v. Skyview Capital LLC et al.\*](#), the Second District Court of Appeal held that an arbitrator cannot cure a missed or late arbitration fee payment, even though it was the arbitrator that set a new deadline for the arbitration fees.

## The Hohenshelt Decision: Background

In [\*Hohenshelt v. Superior Court \(Golden State Foods Corp.\)\*](#), S284498, Aug. 11, 2025, the Supreme Court of California rejected the rigid construction adopted by many lower courts.

In that case, Golden State successfully compelled arbitration of employment-related claims filed by the plaintiff in state court, but thereafter failed to timely pay arbitration invoices issued by JAMS. On September 30, 2022, JAMS notified the parties that a failure to pay the invoices by October 28, 2022 could lead to cancellation of the arbitration hearing. The same day, Hohenshelt moved to withdraw from arbitration, asserting that Golden State was in default under Section 1281.89. Golden State paid the fees shortly thereafter and offered several reasons for the delay, including that its counsel was preparing for paternity leave, that his office "was unaware that these invoices had been issued", and that Hohenshelt had not been harmed or burdened by any slight delay.

The trial court held in favor of Golden State, viewing the October 28, 2022 date as a new deadline set by the arbitrator, but the Court of Appeal reversed, reasoning that the trial court incorrectly ignored the clear language of Section 1281.98, which expressly provides that any extension of time for the due date must be agreed upon by all parties. The Court of Appeal also rejected Golden State's argument that Section 1281.89 is preempted by the Federal Arbitration Act ("FAA").

## Decision of the California Supreme Court

The Supreme Court, in a split decision, concluded that the Legislature in enacting Section 1281.98 only sought to deter companies and employers from engaging in *strategic* nonpayment of arbitration fees. Accordingly, it found that employers should not automatically lose their contractual right to arbitration where the nonpayment of fees resulted from a good-faith mistake, inadvertence, or other excusable neglect, even though Section 1281.98 contains no such exception.

Based on this broad interpretation of the statute, the Supreme Court held that Section 1281.98 was not preempted by the FAA, because the statute “makes arbitration contracts enforceable on the same grounds as those that apply to other contracts: When a party breaches its contractual obligations willfully, fraudulently, or with gross negligence, it cannot escape the consequences by pointing to a lack of harm to the other party.”

As a result, the Supreme Court reversed the Court of Appeal’s order and directed the Court of Appeal to remand the matter to the trial court for consideration of whether Golden State may be excused for its failure to timely pay arbitration fees, such that the stay of litigation should not be lifted and the parties should be returned to arbitration, and whether the delay resulted in compensable harm to Hohenshelt.

## Takeaways for Employers

It is difficult to predict how courts may apply the California Supreme Court’s judicially created exception which allows for a good-faith mistake, inadvertence, or other excusable neglect. Employers should remain diligent by continuing to proactively take measures to avoid late payments and should reevaluate their arbitration agreements to ensure smart drafting that is consistent with applicable law.

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