

## AFTER HOHENSHELT v. SUPERIOR COURT: WHAT IS THE STATUS OF THE “30-DAY FORFEITURE” RULE?

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The California Supreme Court recently addressed an important issue for California employment and consumer lawyers: whether Code of Civil Procedure (“CCP”) § 1281.98—the “30-day pay arbitration invoices or forfeit” statute—is preempted by the Federal Arbitration Act (“FAA”). In *Hohenshelt v. Superior Court* (2025) 18 Cal.5th 310 (“*Hohenshelt*”), the Court affirmed the validity of the law, but rejected the strict, automatic-forfeiture reading almost all courts had embraced.

What remains intact is the statute’s default framework. In employment and consumer matters, providers issue invoices during the pendency of an arbitration that are “due upon receipt,” and the drafting party must pay within 30 days of that due date unless the arbitration agreement sets a different timeline or the parties mutually agree to extend it<sup>1</sup>—even after a dispute arises. If payment is late, the employer or non-consumer party is in material breach of the arbitration agreement and has waived the right to arbitrate, and the employee or consumer may withdraw to court and seek sanctions or, with the arbitrator’s consent, continue in arbitration. The Court reaffirmed these features.

<sup>1</sup> Extensions to pay are only applicable during the pendency of an arbitration proceeding (see CCP § 1281.98(a) (2)). The Court did not address CCP § 1281.97 in *Hohenshelt*—i.e., the “30-day pay arbitration invoice or forfeit” statute applicable *before* an arbitration can proceed—but it is likely that cases involving § 1281.97 would be similarly decided.

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What's changed is the pro-employee/consumer approach under which courts have required strict compliance with this statute. Reading § 1281.98 against longstanding, generally applicable contract principles, the Court held that a late payment does not automatically extinguish arbitral rights where the nonpayment was not willful, grossly negligent, or fraudulent or where equitable relief is otherwise appropriate. The opinion identified familiar paths for relief— where timely payment was “impossible, illegal, or impracticable” because of extreme and unreasonable difficulty, expense, injury, or loss involved (Civil Code § 1511); the late payment was not “willful, fraudulent, or grossly negligent” and the employer fully compensates the employee for any losses resulting from the delay (Civil Code § 3275); or the late payment was the result of “mistake, inadvertence, surprise, or excusable neglect” (CCP § 473(b)). Accordingly, the Court directed the Court of Appeal to remand the case to the trial court to decide whether any delay in the case before it was excusable and whether it caused compensable harm.

Doctrinally, this construction undercuts arguments that § 1281.98 “disfavors” arbitration. As interpreted by the California Supreme Court, the statute’s purpose is to keep arbitrations moving by ensuring timely payment of fees, and its safety valves mirror neutral contract doctrines. That harmony with generally applicable state law defeated the FAA preemption challenge.

The Court also disapproved several decisions to the extent that they treated forfeiture as mandatory upon any late payment, explicitly naming *Gallo v. Wood Ranch USA, Inc.* (2022) 81 Cal.App.5th 621 (lack of blame or lack of prejudice is not a defense), *Espinoza v. Superior Court* (2022) 83 Cal.App.5th 761 (substantial compliance, unintentional nonpayment, or absence of prejudice is not a defense), *De Leon v. Juanita’s Foods* (2022) 85 Cal.App.5th 740 (lack of delay or lack of prejudice is not a defense), *Williams v. West Coast Hospitals, Inc.* (2022) 86 Cal.App.5th 1054, *Doe v. Superior Court* (2023) 95 Cal.App.5th 346 (the check was in the mail before 30 days is not a defense), *Suarez v. Superior Court* (2024) 99 Cal.App.5th 32 (CCP § 1010.6 does not apply, so two extra court days are not added to the 30 days when the invoice is sent via email), *Hernandez v. Sohnen Enterprises, Inc.* (2024) 102 Cal.App.5th 222, *Keeton v. Tesla, Inc.* (2024) 103 Cal.App.5th 26, *Trujillo v. J-M Manufacturing Co., Inc.* (2024) 107 Cal.App.5th 56, *Colon-Perez v. Security Industry Specialists, Inc.* (2025) 108 Cal.App.5th 403 (CCP § 473 is not grounds for relief), and *Sanders v. Superior Court* (2025) 110 Cal.App.5th 1304. Going forward, the inquiry will be fact-intensive: Was the delay willful or strategic? How long was it? What notice and follow-up occurred? Did the non-drafting party incur costs or suffer prejudice? Can those harms be fully compensated?

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*Wilson v. TAP Worldwide, LLC*

The impact of *Hohenshelt* has already been felt at the California Court of Appeal. In *Wilson v. TAP Worldwide, LLC* (Sept. 22, 2025, certified for publication and modified, Oct. 2, 2025) (“*Wilson*”), the arbitration provider received the employer’s payment of arbitration fees three days after expiration of the 30-day deadline in § 1281.98. On the employee’s motion, the trial court vacated its order compelling arbitration and awarded the employee attorney’s fees and costs. The Second District appellate panel expressly followed *Hohenshelt* and reversed, holding that the employer’s failure to timely pay the fees was not “willful, grossly negligent, or fraudulent,” where the employer had initiated a virtual card payment by the 30-day deadline, but the payment was not received until three days later because of a processing delay.

**Practical implications for California employment and consumer practitioners**

--Deadlines still matter. Employers and non-consumer parties who do not pay invoices within the 30-day window still risk default and waiver of the right to arbitrate.

--Relief from forfeiture requires a good reason. Defense counsel should document good faith efforts to make timely payment, any barriers to timely payment, and any grounds for “mistake, inadvertence, surprise, or excusable neglect.”

--Opposing relief requires a record. Plaintiff’s counsel should document notice, reminders, schedule impacts, and any prejudice as a result of delay. Repeated or lengthy delays might help defeat equitable relief and encourage a court to enforce the statutes strictly, as written.

--Arbitration agreements can be revised to extend the deadline for paying arbitration invoices during the pendency of an arbitration.

Bottom line: *Wilson* shows that as courts follow *Hohenshelt*, the “strict liability” approach to CCP § 1281.98 will be replaced by a full-context review, but the statute will remain a strong deterrent to untimely payment of arbitration fees.

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