New York Federal Court Allows Workers to Dodge Arbitration for Claims Brought With Sexual Harassment Case

Insights
3.15.23

A New York federal judge recently shook up the employment law world when he ruled that a new federal law preventing employers from requiring arbitration in sexual harassment claims also blocked arbitration for other claims brought alongside in the same case. Last year's Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act (EFAA) prohibits employers from unilaterally enforcing arbitration agreements for disputes involving sexual harassment or sexual assault – but few believed that the law would be interpreted so broadly as to also sweep up non-sexual harassment claims that happened to be brought in the same legal action. What do employers need to know about this surprising turn of events?

What is the EFAA?

The EFAA amended the Federal Arbitration Act (FAA) and was signed into law on March 3, 2022, by President Joe Biden. It amended federal law by ending "forced" arbitration of sexual harassment and sexual assault disputes. The statute defines a "sexual harassment dispute" as "a dispute relating to conduct that is alleged to constitute sexual harassment under applicable Federal, Tribal, or State Law. For a detailed summary of the law, read our comprehensive FAQs here.

Note that our FAQs addressed the issue of whether a retaliation claim arising from the exact same set of facts as a sexual harassment claim would be blocked from arbitration by the EFAA. We noted that the version of the law passed by Congress specifically narrowed the definition of "disputes" from earlier versions to exclude "retaliation," and thus we concluded that employers would have a solid argument to keep accompanying claims in arbitration. "This is an issue that will likely be disputed in litigation," we noted – and that prediction has now come to fruition.

Federal Judge Broadly Blocks Arbitration

Two decisions coming out of the Southern District of NY recently analyzed the impact the EFAA would have when a worker brings other non-sexual harassment claims alongside a sexual harassment dispute that would otherwise be subject to mandatory arbitration.

In the first of the two cases, Teyo Johnson sued his former employer Everyrealm, a digital real estate company headquartered in New York. As a condition of employment, Johnson entered into an agreement with Everyrealm containing a broad mandatory arbitration provision. He agreed that "any

dispute or controversy" arising out of his employment would be settled by arbitration. The language used in the agreement is relatively standard language used widely today in pre-dispute arbitration agreements across the country.

Johnson's employment with Everyrealm ended poorly and he filed a complaint alleging claims of sexual harassment alongside claims of race, gender, and ethnicity discrimination. Everyrealm moved to compel arbitration of all of Johnson's claims except his claims of sexual harassment, acknowledging the EFAA prevented forced arbitration. Johnson argued that the remainder of his claims were also not subject to arbitration under the EFAA because his complaint included sexual harassment claims, and therefore must be litigated in court.

The court agreed with Johnson on February 24 and held that the EFAA renders an arbitration clause unenforceable as to the *entire case* involving viably pled sexual harassment claims.

Judge Paul Engelmayer's analysis relied on the congressional intent of the EFAA. The operative language of the EFAA makes a pre-dispute arbitration agreement invalid and unenforceable "with respect to a *case* which is filed under Federal, Tribal, or State law and relates to the…sexual harassment dispute" (emphasis added). He reasoned that the text of the statute makes clear that its invalidation of an arbitration agreement extends to the entirety of the *case* relating to the sexual harassment dispute, not merely the discrete claims in that case that themselves either allege such harassment or relate to a sexual harassment dispute.

He said that Congress, in enacting the EFAA, can be presumed to have been sensitive to the distinct meanings of the terms "case" and "claim." The court continued by saying that it is also significant that the EFAA amended the FAA directly. Congress' choice to do so with text broadly blocking enforcement of an arbitration clause with respect to an entire "case" relating to a sexual harassment dispute reflects its rejection of the FAA norm of allowing individual claims in a lawsuit to be parceled out to arbitrators or courts depending on each claim's arbitrability.

Silver Lining?

In a second decision, however, Judge Engelmayer made clear that a worker cannot tack on an implausibly pled sexual harassment claim in order to avoid arbitration of other claims.

In *Yost v. Everyrealm, Inc.*, decided on the same day as the first case, Katherine Yost also filed a complaint against the company that included sexual harassment claims that were insufficiently pled such that they could not survive a motion to dismiss for failure to state a claim. Because Yost failed to allege plausible claims of sexual harassment, the judge dismissed those claims. Judge Engelmayer held that, without surviving sexual harassment claims, the EFAA was not implicated with respect to arbitration of the remaining non-sexual harassment claims.

Conclusion

The takeaway from these cases is that plaintiffs with pre-dispute arbitration agreements who bring plausibly plead claims of sexual harassment now have an arrow in the quiver to avoid arbitration of **all** claims that are brought with that same lawsuit. Accordingly, we may now see more lawsuits trying to allege sexual harassment in order to avoid arbitration of other employment claims.

Employers need to be aware that these decisions may render your arbitration agreements unenforceable for all alleged claims, not just sexual harassment. We expect this issue to continue to be litigated across the country, so make sure you subscribe to Fisher Phillips' Insight system to get the most up-to-date information. If you have questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our New York City office.

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