



Federal Judge Strikes Down NY's Sexual Harassment Arbitration Ban

Insights

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An agreement to arbitrate sexual harassment claims is enforceable, according to a recent decision handed down by a federal judge in the Southern District of New York, despite a state law purporting to ban mandatory arbitration of such claims (*Latif v. Morgan Stanley & Co., LLC*). The decision clears up confusion that had existed for much of the past year, as employers were caught between a broad new state law and a well-established federal policy permitting arbitration of such claims. What do New York employers need to know about this recent decision?

Background Of Current Dispute

Spurred by the #MeToo movement, the New York State Legislature passed a suite of new sexual harassment laws last year. As part of that new legislation, employers were prohibited from entering into contractual provisions that mandated arbitration for any allegations or claims of sexual harassment.

Many employers and legal practitioners believed this law was preempted by the Federal Arbitration Act (FAA) and the strong federal policy favoring arbitration. Because the new state legislation appeared to be in direct conflict with federal law, over the past year, New York employers were faced with the conundrum of whether to include or carve out sexual harassment claims from their arbitration agreements. On June 25, Judge Denise Cote finally shed some light on this issue, finding that the New York state law prohibiting arbitration of sexual harassment claims was indeed preempted by the FAA.

Court Finds Sexual Harassment Claims Arbitrable

Mamoud Latif was formerly employed by Morgan Stanley. Prior to beginning his employment with Morgan Stanley, Latif signed an offer letter which incorporated by reference an arbitration agreement providing that any claims of discrimination, harassment, or retaliation would “be resolved by final and binding arbitration,” and that the agreement would be “governed and interpreted in accordance with” the FAA.

After Morgan Stanley terminated Latif, he filed a lawsuit in the United States District Court for the Southern District of New York, alleging various claims of discrimination and retaliation, including claims of sexual harassment. Latif did not dispute that the arbitration agreement was enforceable to all of his claims with one exception: his claims of sexual harassment, which he argued were

precluded from mandatory arbitration under CPLR § 7515. Morgan Stanley filed a motion to compel arbitration of Latif's sexual harassment claims, which Judge Cote recently granted.

In finding that Latif's sexual harassment claims were indeed arbitrable, the court noted that the FAA's policy favoring enforcement of arbitrations cannot easily be displaced by state law. In fact, the court found that because the New York law prohibited "outright" the arbitration of Latif's sexual harassment claims, "the analysis is straightforward: the conflicting rule is displaced by the FAA." Applying well-established precedent, the Court found that application of state law to invalidate the parties' agreement to arbitrate Latif's sexual harassment claims would be inconsistent with the FAA, and that Latif's sexual harassment claims were therefore subject to mandatory arbitration.

Judge Cote Takes The Decision A Step Further

In addition to finding that Latif's sexual harassment claims were subject to arbitration, Judge Cote also took aim at the bill recently passed by the New York state legislature in June 2019, which purports to extend the prohibition on mandatory arbitration to any type of discrimination claim, not just sexual harassment. In a footnote, Judge Cote noted that the expansion of CPLR § 7515 "would not provide a defense to the enforcement of the arbitration agreement" against claims.

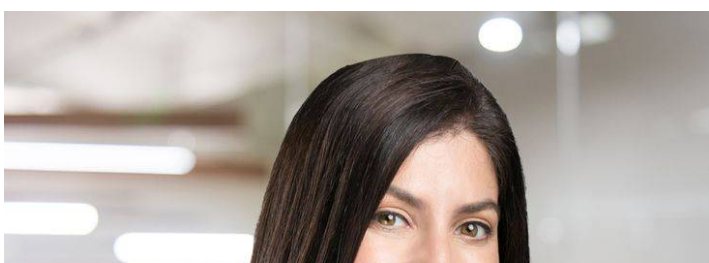
What Does This Decision Mean For Employers?

While the direct conflict between CPLR § 7515 and the FAA has caused headaches for employers in New York, Judge Cote's decision confirms that employers covered by the FAA may include sexual harassment claims in their arbitration agreements should they wish to do so. It also suggests that the state's latest effort to prohibit arbitration of any type of discrimination will not withstand judicial challenge.

Accordingly, New York employers should feel comfortable continuing to use arbitration agreements without pause. We will continue to monitor further developments and provide updates on this issue and other labor and employment issues affecting New York employers, so make sure you are subscribed to Fisher Phillips' alert system to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney, or any attorney in our New York City office.

This Legal Alert provides an overview of a federal court decision. It is not intended to be, and should not be construed as, legal advice for any particular fact situation

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