Legal Update Article

Federal Arbitration Act Preempts New York's Bar on Agreements to Arbitrate Sexual Harassment Claims, Court Rules

June 28, 2019

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An agreement to arbitrate sexual harassment claims is enforceable pursuant to the Federal Arbitration Act (FAA), federal Judge Denise Cote has ruled, rejecting arguments that New York law voids such an agreement. *Latif v. Morgan Stanley & Co. LLC, et al.,*No. 1:18-cv-11528 (S.D.N.Y. June 26, 2019).

While many thought that laws in New York (and other states) prohibiting agreements to arbitrate sexual harassment claims are inconsistent with the strong federal policy in favor of arbitration, *Latif* is one of the first decisions to address this squarely.

Background

The plaintiff, Mahmoud Latif, signed an arbitration agreement when he accepted a job with the employer. The arbitration agreement provided that it "shall be governed by and interpreted in accordance with" the FAA.

Latif claimed that he was subjected to sexual harassment and that he was ultimately terminated for complaining about harassment. He filed claims under federal and state law and his former employer filed a motion to compel arbitration.

New York Law

In 2018, New York passed a statute that its sponsors described as "sweeping legislation that deals with the scourge of sexual harassment." One provision, codified as Section 7515 of the Civil Practice Law and Rules (CPLR), prohibits contracts that require "the parties submit to mandatory arbitration to resolve any allegation or claim of an unlawful discriminatory practice of sexual harassment." Latif relied primarily on CPLR 7515 to oppose the motion to compel arbitration of his sexual harassment claims.

The New York legislature had passed a bill at the end of its 2019 Legislative Session to expand this prohibition to agreements to arbitrate all discrimination claims (the Governor is expected to sign the bill into law).

New York Law Preempted by FAA

The U.S. Supreme Court has made clear that state laws prohibiting the use of arbitration to resolve particular types of disputes are preempted by the FAA. *AT&T Mobility LLC v. Concepcion,* 563 U.S. 333, 341 (2011) ("When state law prohibits outright the arbitration of a particular type of claim, the analysis is straightforward: The conflicting rule is displaced by the FAA.").

Quoting heavily from U.S. Supreme Court decisions on the subject, Judge Cote held that application of CPLR 7515 "would be inconsistent with the FAA."

The court rejected the plaintiff's argument that CPLR 7515 creates a "generally applicable contract defense" that is permitted by the FAA. While the law was passed as part of a

package of laws that address sexual harassment, the court explained that the specific provision at issue treats arbitration agreements differently from other contracts and, thus, is preempted by the FAA.

The court also rejected the argument that New York's interest in "transparently addressing workplace harassment" allowed the state to create "a ground in equity for the revocation of any contract." Simply put, the court held that CPLR 7515 violates the federal requirement that arbitration agreements be treated equally as any other contract.

Latif confirms that employers that are covered by the FAA can rely on arbitration to resolve disputes over sexual harassment, notwithstanding the efforts of a state legislature to limit the claims that may be sent to arbitration.

Please contact a Jackson Lewis attorney with any questions related to this case, implementing employee arbitration agreements, harassment policies, training for management and employees, and other preventive practices.