What The State Giveth, The Feds Taketh Away

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In September 2000, we distributed an article entitled Employment Arbitration Agreements Are Legal Again - For Now At Least. In that article, we explained that the California Supreme Court, in Armendariz v. Foundation Health Psychcare Services, Inc., held that employers may make mandatory arbitration agreements a condition of employment so long as the proposed mandatory arbitration agreement meets certain fairness and due process standards. We noted that in Armendariz, the California Supreme Court specifically rejected the Ninth Circuit's holding in Duffield v. Robertson Stephens & Co. that mandatory employment arbitration agreements could never apply to claims for discrimination under federal or state antidiscrimination laws.

While California state courts have confirmed their intent to uphold employment arbitration agreements, federal authorities remain firm that they will not permit mandatory employment arbitration agreements to apply to claims of discrimination arising under Title VII. On November 27, 2000, in Equal Employment Opportunity Commission v. Luce Forward Hamilton & Scripps LLP (the "EEOC Decision"), a California federal court ruled that, unless and until the Ninth Circuit's decision in Duffield is overturned, California federal courts will, and indeed must, continue to find mandatory employment arbitration agreements that purport to cover federal discrimination claims unenforceable.

FACTUAL BACKGROUND

The EEOC Decision actually arose out of a California lawsuit filed by Donald Lagatree in February 1998, Lagatree v. Luce Forward Hamilton & Scripps LLP. Mr. Lagatree claimed that Luce Forward had improperly terminated his employment when he refused to sign a mandatory employment arbitration agreement. The state court dismissed Mr. Lagatree's claims, concluding that employers could terminate employees who refused to sign pre-employment arbitration agreements.

The EEOC then filed a new lawsuit against Luce Forward in federal court. The EEOC also claimed that it was improper for Luce Forward to have terminated Mr. Lagatree's employment based on Mr. Lagatree's refusal to sign a mandatory arbitration agreement and sought: (1) monetary damages on behalf of Mr. Lagatree; and (2) a permanent injunction on behalf of the public precluding Luce Forward from requesting employment arbitration agreements of new employees.

THE GOOD NEWS

The federal court concluded that the EEOC's claim for monetary relief on behalf of Mr. Lagatree was barred by Mr. Lagatree's prior state court litigation. The federal court ruled that, because the state court had rejected Mr. Lagatree's wrongful termination claims, the EEOC could not attempt to re-litigate those same issues in federal court.

THE BAD NEWS

The federal court concluded, however, that the EEOC's claim for injunctive relief was new and different from the claims asserted by Mr. Lagatree in state court. The court therefore considered the merits of the EEOC's claim for injunctive relief. The EEOC argued that, under the Ninth Circuit's decision in Duffield, mandatory employment arbitration agreements which purport to cover claims for discrimination under Title VII are unlawful. Luce Forward argued that, under the California Supreme Court's decision in Armendariz, mandatory arbitration agreements can encompass claims for discrimination and that Duffield was wrongly decided. The federal court ultimately and reluctantly sided with the EEOC, stating:

"LFHS criticizes Duffield as being wrongly decided and notes that Duffield will eventually be overturned by the Ninth Circuit sitting en banc, or by the United States Supreme Court. The Court acknowledges that a great weight of legal authority supports LFHS's argument ... Nevertheless, unless and until that day comes, Duffield is the law of the Ninth Circuit, and the employment practice of LFHS that is at issue in this action clearly violates that law."

Consequently, the federal court ordered Luce Forward to discontinue requiring employees to agree to arbitrate Title VII claims as a condition of employment and/or from attempting to enforce any such previously executed agreements.

THE IMPACT OF THE EEOC DECISION

Recently the EEOC has made the investigation of mandatory employment arbitration agreements a standard aspect of its investigation of any charge of discrimination. Thus, if an employee files a charge of discrimination, claiming that she was sexually harassed in violation of Title VII, the EEOC will further investigate whether the employer maintains a mandatory employment arbitration policy. If so, and if the arbitration agreement purports to cover claims under Title VII, the EEOC may conclude the employer has violated Title VII, even if the EEOC concludes that no sexual harassment actually occurred.

Based on the recent decisions regarding mandatory employment arbitration agreements in both state and federal court, we are advising clients to do two things. First, as we mentioned in our September article regarding the Armendariz decision, employers should re-evaluate whether mandatory employment arbitration agreements are right for them. For some companies, arbitration may still be an efficient vehicle for resolving employment disputes, but for others, arbitration may be too expensive and therefore no longer desirable.

Second, employers who elect to maintain mandatory employment arbitration agreements should review their agreements to determine whether the agreements purport to cover claims of discrimination under Title VII. If so, employers should consider amending their arbitration agreements to appropriately address Title VII claims.

Finally, because there is a possibility that the Duffield decision will be overturned, especially with the change of administration in the federal government, employers may want to only conditionally exclude Title VII claims from their arbitration agreements until such time as the new administration addresses the issue. Employers should contact their employment counsel to discuss how best to draft such amendments.

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Practice Areas

Labor and Employment Counseling