

Blog Post

Federal Judge Rejects New York Law Prohibiting Mandatory Pre-Dispute Arbitration of Sexual Harassment Claims

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By [Paul J. Rutigliano](#) and [Jeffrey A. Kimmel](#)

New York's ban on pre-dispute agreements requiring employees to use arbitration to resolve sexual harassment claims is invalid, a federal judge in Manhattan has ruled. In a decision from the United States District Court for the Southern District of New York, U.S. District Judge Denise Cote held, in *Latif v. Morgan Stanley & Co. LLC*, that Section 7515 of New York's Civil Practice Law and Rules (CPLR), which prohibits mandatory arbitration of sexual harassment claims is inconsistent with the Federal Arbitration Act (FAA), and therefore, invalid and unenforceable.

By way of background, the 2018-2019 New York State Budget, signed into law in April 2018, contained several sweeping provisions addressing workplace sexual harassment in direct response to the #MeToo movement, including a prohibition on pre-dispute agreements to arbitrate sexual harassment claims, codified in CPLR 7515. Following the enactment of this legislation, we noted in a prior blog post [here](#) that disputes over the validity of this state law would likely make their way into the courts, particularly given its tension with the FAA's liberal policy favoring arbitration. This is precisely the issue that the *Latif* court addressed.

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In *Latif*, the plaintiff, hired to work in one of Morgan Stanley's New York City offices, signed an offer letter that included an agreement that all claims against Morgan Stanley (including sexual harassment claims) were subject to mandatory arbitration. Shortly after he commenced employment, the plaintiff alleged that he became the target of inappropriate comments concerning his sexual orientation, inappropriate touching, sexual advances and offensive comments about his religion. He also alleged that a female supervisor sexually assaulted him. The plaintiff alleged that he reported these incidents to Morgan Stanley's human resources department. Following several email exchanges and meetings over the course of six-months with human resources concerning the alleged incidents, the plaintiff's employment was terminated.

After plaintiff filed his lawsuit, which included sexual harassment claims, Morgan Stanley filed a motion to compel arbitration. In opposition, the plaintiff acknowledged that all of his claims were subject to arbitration except his sexual harassment claims, which, he contended, could not be compelled to arbitration because of CPLR 7515.

Relying heavily on U.S. Supreme Court precedent, Judge Cote rejected the plaintiff's argument that CPLR 7515 rendered invalid the agreement to arbitrate his sexual harassment claims. Citing *AT&T Mobility LLC v. Concepcion*, Judge Cote recognized the principal enunciated by the U.S. Supreme Court that "[w]hen state law prohibits outright the arbitration of a particular type of claim, the analysis is straightforward: The conflicting rule is displaced by the FAA." Against this backdrop, Judge Cote held that the FAA preempted New York's ban on precluding mandatory arbitration of sexual harassment claims.

Also of importance is that Judge Cote noted in a footnote that on June 19, 2019, the New York legislature passed a bill, which would, among other things, expand CPLR 7515 to encompass a ban on

mandatory arbitration of claims of discrimination generally, rather than specifically sexual harassment claims. Judge Cote indicated that the amended law would likely also be found invalid and therefore “would not provide a defense to the enforcement of the Arbitration Agreement.”

The Court’s decision in *Latif* underscores the strong presumption in favor of arbitration, and scores a win for New York employers seeking to enter into mandatory arbitration agreements with their employees to resolve disputes over sexual harassment (and most likely all other types of discrimination claims). However, we do note that the Ending Forced Arbitration of Sexual Harassment Act, which would amend the FAA to prohibit arbitration of sexual harassment claims, is pending in Congress. While it does not appear that this proposed legislation has garnered much steam, if passed, it would pave the way for the enforceability of state laws prohibiting pre-dispute agreements to arbitrate sexual harassment claims such as the one at issue in *Latif*.

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