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INFORMATION MEMO
LABOR AND EMPLOYMENT LAW

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Federal Court Holds That New York Law Prohibiting Mandatory Arbitration of Sexual Harassment Claims Is Invalid

In 2018, Governor Cuomo signed a State Budget bill that included various provisions addressing sexual harassment in the workplace. Among those provisions was a prohibition on including in any written contract a clause requiring the submission of sexual harassment claims to arbitration, except where inconsistent with federal law. On June 26, 2019, the U.S. District Court for the Southern District of New York held, in *Latif v. Morgan Stanley & Co. LLC*, that this New York law prohibiting mandatory arbitration of sexual harassment claims is inconsistent with the Federal Arbitration Act ("FAA") and is therefore invalid.

In *Latif*, the plaintiff signed an offer letter that included an agreement that all claims against Morgan Stanley (including claims involving sexual harassment) were subject to mandatory arbitration. According to the plaintiff, a few months after he began his employment, he became the target of inappropriate comments regarding his sexual orientation, inappropriate touching, and sexual advances. The plaintiff alleged that he reported these incidents to Morgan Stanley's human resources department. The plaintiff also alleged that after months of e-mail exchanges and meetings with representatives of the human resources department, his employment was terminated.

The plaintiff filed a lawsuit in the U.S. District Court for the Southern District of New York, and Morgan Stanley responded with a motion to compel arbitration of the plaintiff's claims. The Court granted Morgan Stanley's motion to compel arbitration, holding that the FAA requires the enforcement of written arbitration agreements to resolve controversies except in very limited circumstances. The Court further held the "FAA's policy favoring the enforcement of arbitration agreements in not easily displaced by state law." Citing Supreme Court precedent, the Court stated: "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." Thus, the New York law prohibiting mandatory arbitration of sexual harassment claims was held to be preempted by the FAA.

The Court noted in a footnote that the New York law prohibiting mandatory arbitration of sexual harassment claims was expanded on June 19, 2019, to include all discrimination claims under the New York Human Rights Law. The Court held that the amended law also "would not provide a defense to the enforcement of the Arbitration Agreement."

This decision is a victory for New York employers seeking to enter into mandatory arbitration agreements with their employees to resolve workplace disputes. Employers that have already entered into such agreements can rest easy with the knowledge that those agreements will be enforceable with respect to discrimination claims despite the New York legislature's attempts to prohibit them.

If you have any questions about this Information Memo, please contact Kaveh Dabashi, any of the attorneys in our Labor and Employment Law Practice, or the attorney in the firm with whom you are regularly in contact.

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