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Ninth Circuit Rules in Favor of Retroactive Application of Arbitration Agreement

The Ninth Circuit Court of Appeals recently ruled that an employer could require a former employee to arbitrate her claims despite the fact that her claims arose *before* the effective date of the parties' arbitration agreement. (See *Sanfilippo v. Match Group LLC* (9th Cir., Sept. 28, 2021, No. 20-55819).) This ruling is good news for employers and a reminder that arbitration agreements continue to be a valuable tool for defending against lawsuits from employees.

The employee sued her former employer for sexual harassment, wrongful termination, and a host of other related claims. The employer moved to compel the employee's claims to arbitration, relying on an arbitration agreement that the employee signed after she complained to the company's HR department. The employee argued that the arbitration agreement was unenforceable as to her claim because her claim arose before the effective date of the arbitration agreement. She further argued that when she signed the agreement, she was under the impression that the agreement would only cover future disputes. In support of this argument, the employee pointed to language in the agreement stating that differences "may arise" between the employer and employee. The employee argued that this implied that the agreement was limited to covering future disputes.

The Ninth Circuit disagreed with the employee and ruled that arbitration agreements can be drafted to encompass disputes arising before their effective date. In this regard, the agreement in question made it clear that it was intended to cover claims that pre-dated the effective date of the agreement.

What This Means for Employers:

Arbitration agreements continue to be one of the most effective tools that California employers have at their disposal to defend against costly litigation, particularly wage and hour class actions. For this reason, California employers, especially those with 100 or more employees, should strongly consider using arbitration agreements with their workforce. Of course, employers should anticipate that such agreements will be challenged by plaintiffs' attorneys in the event of litigation. This case is just one of many examples of plaintiffs' attorneys trying to create novel arguments to overcome an employer's arbitration agreement. As such, employers should work closely with experienced counsel to draft arbitration agreements that are appropriate for their business operations, up to date with an ever-changing body of law, and ultimately capable of withstanding judicial scrutiny. If you have questions about the arbitration agreements, or if you would like to have the terms of your agreement analyzed, please contact the attorneys at Barsamian & Moody at (559) 248-2360.

The goal of this article is to provide employers with current labor and employment law information. The contents should neither be interpreted as, nor construed as legal advice or opinion. The reader should consult with Barsamian & Moody at (559) 248-2360 for individual responses to questions or concerns regarding any given situation.