

How the EFAA Applies to Employee Arbitration Agreements in Sexual Harassment Cases Involving Conduct That Preceded the Law’s Effective Date

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On August 12, 2024, the Second Circuit held that a plaintiff’s hostile work environment claims were subject to the federal Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021 (“EFAA”), even though the plaintiff’s claims arose before the EFAA’s enactment.

The Court found that pursuant to the continuing violation doctrine, a hostile work environment claim accrues each time a plaintiff continues to experience sexual harassment.

Case Background

Congress passed the Federal Arbitration Act (“FAA”) so that courts would treat arbitration agreements “on equal footing with all other contracts and enforce them according to their terms.”

Generally, the FAA requires that arbitration agreements be “valid, irrevocable, and enforceable.” President Joe Biden signed the EFAA into law on March 3, 2022. Under the EFAA, an employee can choose to render their employer’s arbitration agreement unenforceable if they commence a lawsuit under federal or state law “alleging conduct constituting a sexual harassment dispute or sexual assault dispute.” The EFAA applies to any dispute or claim that arises or accrues on or after March 3, 2022 (the “EFAA’s Effective Date”).

Case Procedure

In *Olivieri v. Stifel, Nicolaus & Co., Inc.*, the plaintiff alleged that her manager repeatedly sexually assaulted and sexually harassed her. The plaintiff sued her employer before the EFAA’s enactment, asserting claims under the New York State Human Rights Law (“NYSHRL”) for gender discrimination, a hostile work environment, and retaliation.

She subsequently amended her complaint and added claims under Title VII of the Civil Rights Act of 1964. The defendants moved to compel arbitration, citing an arbitration provision in the plaintiff's employment agreement. The Eastern District of New York granted the defendants' motion compelling arbitration of the plaintiff's claims.

Following the EFAA's enactment, the plaintiff filed a motion for reconsideration based on the EFAA and sought leave to file an amended complaint to update the allegations in her complaint. The District Court granted the plaintiff's motion and denied the defendants' motion to compel arbitration, stating that reconsideration was warranted because of the intervening change in the law.

The District Court held that the plaintiff's "hostile work environment claims constituted ongoing claims subject to the continuing violation doctrine of accrual." Therefore, the District Court found that the EFAA applied to the plaintiff's claims and deemed the arbitration agreement unenforceable.

After that, the defendants appealed the Eastern District's decision. Before the Second Circuit, the issue was whether the plaintiff's hostile work environment claims accrued on or after the EFAA's Effective Date.

Case Analysis

The Second Circuit affirmed the Eastern District's decision and held that the EFAA applies to the plaintiff's claims because her claims accrued after the EFAA's Effective Date. The court stated that hostile work environment claims are subject to the continuing violation doctrine, whereby the plaintiff's claims "continues to accrue, or reaccrues, each time the defendant engages in an act that is part of the ongoing, discriminatory practice that created a hostile work environment."

Therefore, even though the plaintiff's claims initially accrued before the EFAA's Effective Date, her claims continued to accrue with each successive act that was part of the ongoing hostile work environment; thus, the plaintiff's claims were subject to the EFAA, invalidating her arbitration agreement.

The court also rejected the defendants' argument that the EFAA does not apply to retaliation claims because such claims are not contained in the definition of a "sexual harassment dispute." The court clarified that retaliation resulting from a report of sexual harassment is "relat[ed] to conduct that is alleged to constitute sexual harassment."

Takeaways for Employers

- Hostile work environment conduct that occurred before the effective date of the EFAA can still be subject to the EFAA if the hostile work environment conduct continues after the statute's effective date.
- Uncertainty remains about claim-splitting arguments for claims that do not relate to "sexual harassment disputes" or "sexual assault disputes," and that occurred before the EFAA's Effective Date.

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