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California Inches Closer To Killing Arbitration As We Know It…

California Employment Law Update on **October 3, 2024**

It's not like we didn't tell you so, cuz we did! Just last year, we predicted that the latest assault on employer arbitration rights had the potential to destroy arbitration everywhere in the country. *Is Arbitration Becoming "Just Somebody That We Used to Know"?* Well, it's happening, and the most recent salvo (not surprisingly) comes from the Golden State.

On Monday, a California appellate court decided that the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act (the "EFAA") precluded arbitration of a case (*or any part of it*) in which the plaintiff claimed sexual harassment and sexual assault – even though the other claims she asserted did not even remotely relate to the alleged sexual harassment or assault. *Doe v. Second St. Corp.,* 2024 WL 4350420 (Cal. Ct. App. Sept. 30, 2024).

Doe filed the lawsuit against her former employer (The Huntley Hotel) and two of her former supervisors, alleging sexual harassment/assault and discrimination that occurred both before and after the EFAA's effective date. The court first held that the EFAA applies to "continuing violations" that occur at least in part after the statute's effective date of March 3, 2022. Next and perhaps most stunningly, the court concluded that the EFAA barred arbitration not only of the sexual harassment and assault claims, but also of every other claim plaintiff had alleged, including a variety of California wage and hour claims that had nothing whatsoever to do with sexual harassment or assault (*e.g.*, failure to pay the minimum wage and overtime, failure to provide meal and rest breaks, failure to provide accurate pay stubs, etc.).

Relying on recent court opinions from other jurisdictions, the court held that where a plaintiff pleads a claim of sexual harassment or sexual assault, the entire case (and, therefore, all claims alleged in it) is immune from arbitration. Indeed, the court found that "because all of the causes of action are asserted by the same plaintiff, against the same defendants, and arise out of plaintiff's employment by the hotel" the case "relates to" a "sexual harassment dispute."

Left undecided is what happens if a sexual harassment or assault claim is without merit or even frivolous and ends up being dismissed by the trial court. Once the harassment/assault claim disappears (along with the immunity from arbitration that it confers), can the other claims then be compelled to arbitration? One such case litigated by our firm in New York says yes: *Yost v. Everyrealm*, 657 F. Supp. 3d 563, 591 (S.D.N.Y. 2023) ("the Court grants the Everyrealm defendants' motions to dismiss the sexual harassment claims … and holds that, with the dismissal in full of these claims, the EFAA no longer has any bearing on the pending motion to compel arbitration in this case."). But, with a lack of additional authority on the issue thus far, only time will truly tell…

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Related Professionals

- **Anthony J. Oncidi**
  Partner
- **Hayden F. Bashinski**
  Associate