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Another Arbitration Agreement Bites the Dust!

California Employment Law Update on **February 6, 2025**

The California Court of Appeal dealt another blow to arbitration, just months after we reported the last such decision here.

This time, the Court ruled that the federal Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act ("EFAA") overrides state law—even in cases in which the employee has signed an arbitration agreement that explicitly invokes state law favoring arbitration.

Kristin Casey, a former employee of D.R. Horton, Inc., sued the company and one of its employees, Kris Hansen, for sexual harassment, sex discrimination, retaliation, and failure to prevent discrimination and harassment in September 2023. D.R. Horton attempted to enforce an arbitration agreement in Casey's employment contract, which included a choice-of-law provision applying California law. Casey opposed arbitration, arguing that the EFAA gave her the right to pursue her claims in court.

The EFAA, enacted in 2022, provides that a "person alleging conduct constituting a sexual harassment dispute" may elect that "no predispute arbitration agreement . . . shall be valid or enforceable with respect to the case filed under federal, tribal or state law and relates to the sexual harassment dispute."

The trial court upheld the arbitration agreement, enforcing the terms to which Casey had agreed. But on a writ petition, the California Court of Appeal reversed, holding that the EFAA preempts state law so long as the employment relationship involves interstate commerce (a low hurdle). The court further determined that an employer cannot rely on a choice-of-law clause to avoid the effect of the EFAA.

You can read the full decision here.

View original.

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