

SJC Rules Arbitration Clauses in Employment Agreements Must Be Specific

On July 27, 2009, the Massachusetts Supreme Judicial Court (“SJC”) issued an opinion in a gender-based discrimination case holding that for an employer to compel arbitration for an employee’s claim for discrimination, the arbitration clause in the employment agreement must clearly state that discrimination claims are subject to arbitration.

The SJC’s decision came in the matter of *Warfield v. Beth Israel-Deaconess Medical Center, Inc., et al.* Dr. Carol Warfield was employed by Harvard-Medical Faculty Physicians (“HMFP”) as an anesthesiologist on the Medical Staff of Beth Israel-Deaconess Medical Center (“BIDMC”) since 1980. On March 27, 2000, Dr. Warfield entered into an employment agreement with BIDMC and HMFP where she agreed to serve in the capacity of Anesthesiologist-in-Chief for BIDMC. The employment agreement included an arbitration clause that provided in relevant part: “Any claim, controversy or dispute arising out of or in connection with this Agreement, or its negotiations, shall be settled by arbitration.” Dr. Warfield alleges that beginning in 2001, she was the subject of a “relentless pattern of gender-based discriminatory treatment” by the Chief of Surgery at BIDMC. In July of 2007, Dr. Warfield’s employment as Anesthesiologist-in-Chief at BIDMC was terminated by the President of BIDMC. Dr. Warfield alleges that the termination was “discriminatory and retaliatory in its motivation and defaming in its effect.”

In March of 2008, Dr. Warfield filed suit against BIDMC, its President, HMFP and the Chief of Surgery alleging claims of gender discrimination, retaliation, tortious interference with advantageous or contractual relations and defamation. The Defendants moved to dismiss the case and compel arbitration of Dr. Warfield’s claims pursuant to the arbitration clause in her employment agreement with BIDMC and HMFP. In its decision upholding the Superior Court’s denial of the Defendants’ motions to compel arbitration, the SJC held that “consistent with the public policy against workplace discrimination” an employment contract containing an agreement by the employee to limit or waive a claim for discrimination is enforceable only if such an agreement is stated in “clear and unmistakable terms”. The SJC pointed to a recent decision by the United States Supreme Court (*14 Penn Plaza LLC v. Pyett*, 129 S. Ct. 1456 (2009)) in support of its opinion that an intent to arbitrate statutory employment claims must be clearly stated in order to be enforced.

Based upon the SJC’s ruling in *Warfield*, employers should review their existing employment agreement templates to determine if they contain an arbitration clause. Any arbitration clauses will need to be amended to specifically reference discrimination claims in clear and unmistakable terms.

If you have any questions or concerns regarding this Advisory, please do not hesitate to contact any of the attorneys at The Rogers Law Firm.

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