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Massachusetts Supreme Judicial Court Requires Employers to Meet Higher Standard Regarding the Arbitration of Statutory Discrimination Claims

In an important ruling that raises the bar on the level of detail required in arbitration clauses, the Massachusetts Supreme Judicial Court held on July 27, 2009 that employers wishing to arbitrate statutory discrimination claims must include clear and specific language within the employment contract that such claims are covered by the contract's arbitration clause. *Warfield v. Beth Israel Deaconess Medical Center, Inc.*, No. 10375.

Background

Beth Israel Deaconess Medical Center, Inc. ("BIDMC") hired Carol A. Warfield as anesthesiologist-in-chief in 2000. In connection with her position, Warfield entered into an employment agreement with BIDMC, which included an arbitration clause, stating 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."

In 2007, after years of what Warfield alleged was a "relentless pattern of gender-based discriminatory treatment of her" by the chief of surgery at BIDMC, Warfield was demoted from her position as anesthesiologist-in-chief. After her demotion, Warfield claims that her superiors continued to "push her out of her job as a staff anesthesiologist at BIDMC." Warfield filed a complaint in the Massachusetts Superior Court alleging that BIDMC discriminated against her, that Warfield notified her superiors of the discriminatory treatment, and that no or insufficient action was taken to eliminate the discriminatory treatment. BIDMC moved to dismiss Warfield's complaint and compel arbitration on the ground that the employment agreement she signed mandated arbitration of all claims. The Superior Court denied the motions, and BIDMC filed an interlocutory appeal to the Supreme Judicial Court.

The Supreme Judicial Court's Decision

The Supreme Judicial Court granted BIDMC's application for direct appellate review to answer the question of whether broad arbitration clauses in employment contracts are enforceable in the context of employment discrimination claims. Justice Botsford, writing for the majority, concluded that the arbitration clause at issue could not compel arbitration of Warfield's gender discrimination claim because it did not state clearly and specifically that such claims were covered by the contract's arbitration clause. The court noted, however, that the parties to an employment contract are "free to agree on arbitration of statutory discrimination claims," so long as the contract states an intent to do so in unambiguous terms.

The court considered general principles of contract law to interpret the arbitration clause, but also noted that a rebuttable presumption in favor of arbitration exists where a dispute is covered by a broad arbitration clause. The court noted, however, that it had "never been called on to interpret the scope of [broad arbitration clause] language when used in an employment agreement's arbitration clause where the employee raises claims of discrimination under G.L. c. 151B."

Ultimately, the court relied on the public policy behind G.L. c. 151B – to end workplace discrimination – and the language of the agreement itself, which did not mention discrimination claims in any way, to conclude

that the broad language in this employment contract could not constitute an enforceable agreement by Warfield to arbitrate her discrimination claims. Instead, the court found, the language in the arbitration clause only implied an intent to arbitrate disputes that may have arisen from the terms of the agreement itself.

Thus, the court held that "as a matter of the Commonwealth's general law of contract, a private agreement that purports to waive or limit – whether in an arbitration clause or on some other contract provision – the employee's otherwise available right to seek redress for employment discrimination through the remedial paths set out in c. 151B, must reflect that intent in unambiguous terms."

Implication for Employers

The Supreme Judicial Court's holding will likely require many employers to change the language in their employment agreements should they desire discrimination claims to be arbitrated. In the wake of *Warfield*, employers must include language in their employment contract – whether in an arbitration clause or elsewhere – that states, in unambiguous terms, that all discrimination claims brought pursuant to c. 151B must be submitted to arbitration. If a contract includes specific language requiring that discrimination claims be arbitrated, the general presumption in favor of arbitration will apply if a court is ever called upon to interpret the contract.

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