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Proskauer Prevails as Court Rejects End-Run Around Arbitration

California Employment Law Update on **January 6, 2026**

Proskauer secured a victory for our client on a motion to compel arbitration in a sex discrimination action filed in the Los Angeles Superior Court. The plaintiff alleged sex-based discrimination and harassment; retaliation; failure to prevent harassment, discrimination, and retaliation; constructive termination; and intentional infliction of emotional distress. Although the plaintiff had executed an arbitration agreement before beginning employment, she argued the agreement was "unconscionable" (which the Court rejected) and that, in any event, her claims were covered by the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act ("EFAA"), 9 U.S.C. §§ 401-402, the recently enacted federal law that shields claims for sexual harassment and sexual assault from arbitration.

This case reflects a growing trend in which plaintiffs attempt to evade arbitration by conflating sex discrimination with sexual harassment or assault in order to avail themselves of the EFAA's narrow exemptions. Proskauer argued that the plaintiff's allegations—namely, that female security guards were assigned less frequently to higher-paying emergency department shifts—constituted (if anything) *sex discrimination*, not sexual harassment or assault, and could not be recharacterized to nullify an otherwise valid and enforceable arbitration agreement.

In a relatively lengthy and well-reasoned order with nationwide implications in its interpretation of the EFAA, the Court agreed with the employer and rejected the plaintiff's attempt to recast her claims. Drawing a clear distinction between discrimination on the basis of sex on the one hand and sexual harassment on the other, the Court held that the complaint only involved the former and therefore fell outside the scope of the EFAA. Consistent with Proskauer's briefing and argument, the Court further concluded that the employer's assignment practices amounted (at most) to alleged discrimination—but not harassment—under both the California Fair Employment and Housing Act and the EFAA and ordered the case to arbitration.

This case is a potent reminder of the extreme lengths that plaintiffs' lawyers will go to avoid arbitration, because they know the chances of "ringing the bell" with a huge seven- or eight-figure verdict are much better in court than before a seasoned arbitrator.

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