UPDATE ON ARBITRATION OF EMPLOYEE DISPUTES

by: Laura K. Sitar, Esq.

In another employer friendly decision, Iskanian v. COLS Transportation Los Angeles, LLC, a California appellate court has upheld an employer's arbitration agreement requiring both the employee and company to submit all claims to binding arbitration and requiring that each party waive its right to assert class action and representative claims.

The arbitration agreement in question expressly stated that the employee and company agreed that class action and representative action procedures would not be asserted in arbitration and that the employee and company would only assert their own, individual claims and would not represent the interests of any other person. Despite having signed the agreement, employee Arvshavar Iskanian filed a wage and hour class action in court which he later amended to include representative claims under the California Business Code and Private Attorney General Act (PAGA). PAGA gives an employee the right to pursue fines that would normally only be available to the State of California. After numerous legal twists and turns including last summer's United States Supreme Court decision in AT&T Mobility v. Conception, last month the appellate court affirmed the trial court's 2007 order compelling arbitration.

The case reinforces the employer's ability to incorporate class action waivers in their arbitration agreements. However, it creates a conflict among California appellate courts regarding whether an arbitration agreement may also require the waiver of the right to pursue PAGA claims on a representative basis. Several prior decisions on the subject have come to the opposite conclusion. It is likely the split will be resolved by the California Supreme Court. In the meantime, California courts are showing momentum in favor of the enforcing various provisions of well written arbitration agreements.

Iskanian creates additional incentive for employers who currently use employment arbitration agreements to consider the inclusion of class and representative action waivers. Employers who currently do not use such agreements have additional incentive to consider their use.

About the Author:
A shareholder at Wroten & Associates, Laura Sitar defends medical malpractice, employment, and elder abuse cases. She litigates cases on behalf of doctors, dentists and long-term care facilities involving all types of employment actions including sexual harassment, wrongful termination, retaliation and wage and hour claims. She also provides employment related risk management services to help clients avoid litigation. Ms. Sitar became an attorney after a 15-year career in corporate management where she directed the human resource function of a 2000 employee, $100 million region. Since commencing a second career in law 10 years ago, she was a senior associate with a prestigious healthcare defense firm before joining Wroten & Associates, where she is a shareholder.

Ms. Sitar graduated cum laude from Tufts University, in Boston Massachusetts in 1979. She attended Western State University, College of Law, were she graduated summa cum laude and valedictorian of her class in 1998. While at Western State she clerked for Justice William Rylaarsdam on the California Court of Appeals and successfully argued a sexual harassment and retaliation claim before the Ninth Circuit Court of Appeals. She was a recipient of the 1998 Fellowship of the American Board of Trial Advocates. Ms. Sitar has been a member of the California State Bar since 1998 and is admitted to practice in the U.S. District Court for the Central District of California.

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