

Arbitration Back on the Table: NY State Ban on Compelled Arbitration of Sexual Harassment Claims Rolled Back

As discussed in a previous [alert](#), the 2018–19 New York State budget included provisions designed to combat sexual harassment in the workplace, including a ban on compelled arbitration of sexual harassment claims. Recently, in *Latif v. Morgan Stanley*, No. 18-cv-1152, 2019 U.S. Dist. LEXIS 107020 (S.D.N.Y. June 26, 2019), a federal judge in the Southern District of New York ruled that the ban conflicts with the Federal Arbitration Act (“FAA”), and is accordingly unenforceable.

The FAA states that arbitration provisions are enforceable just like any other contract clause, and can be voided only for reasons that can void contract provisions generally, such as fraud, duress, or unconscionability. State laws that conflict with the FAA and interfere with the enforcement of arbitration clauses are preempted. As the Supreme Court has [explained](#), “[w]hen state law prohibits outright the arbitration of a particular type of claim, the analysis is straightforward: The conflicting rule is displaced by the FAA.” Since the New York sexual harassment arbitration ban prohibits the arbitration of a particular type of claim, the *Latif* court held that it is preempted by the FAA. The court also noted that an arbitration ban provision, recently passed by the New York Legislature, affecting sexual harassment and workplace discrimination claims (discussed [here](#)) would also be preempted by the FAA.

The plaintiff may appeal to the United States Court of Appeals for the Second Circuit. Additionally, federal court decisions like *Latif* do not bind state courts, and we may soon see state court decisions on this very issue. We will continue to track developments. At least for now, New York employers may seek to enforce compelled arbitration provisions contained in employment contracts when litigating sexual harassment claims. Employers who include arbitration clauses in employment contracts should consider noting in the agreements that they are covered by the FAA, as the plaintiff did in *Latif*.

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