

# CLIENT ALERT: Massachusetts' Highest Court Holds Statutory Discrimination Claims May Be Subject to Arbitration

On July 27, 2009, the Massachusetts Supreme Judicial Court ("SJC") held that discrimination claims brought pursuant to the state anti-discrimination statute, Mass. Gen. Laws ch. 151B ("Chapter 151B"), may be subject to arbitration. Nevertheless, the Court found that the arbitration clause in the employment agreement did not cover statutory discrimination claims. The case provides useful guidance to employers on drafting enforceable arbitration agreements.

In *Warfield v. Beth Israel Deaconess Medical Center*, Dr. Warfield was the chief of anesthesiology at Beth Israel Deaconess Medical Center until her termination in July 2007. She brought statutory claims of discrimination against the hospital and several individual defendants, as well as common law claims for defamation and tortious interference with advantageous or contractual relations. Defendants moved to dismiss and to compel arbitration of her claims pursuant to an arbitration clause in her employment agreement.

In a case of first impression at the Court, the SJC found that employment discrimination claims arising under Chapter 151B are arbitrable, in theory. However, given the public policy against workplace discrimination, the Court held that to compel arbitration of statutory discrimination claims, an arbitration agreement must state clearly and specifically that such claims are subject to arbitration.

The arbitration clause in plaintiff's employment agreement provided that "any claim, controversy or dispute arising out of or in connection with this Agreement or its negotiations shall be settled by arbitration." The SJC found the clause insufficiently clear to constitute an enforceable agreement to arbitrate statutory discrimination claims (or the common law claims supported by the virtually identical evidence). Justice Cowin dissented on this point, finding the arbitration clause to reflect the consent of all parties to arbitrate discrimination claims.

Arbitration of claims can be beneficial to both employers and employees. Employers seeking to ensure that an employee must arbitrate discrimination claims under Chapter 151B must be mindful of the language used in the agreement. Under the guidance of *Warfield*, those agreements must clearly and unmistakably state that Chapter 151B claims are subject to mandatory arbitration. Employers are reminded to consult with their MBJ attorney about the benefits of arbitration agreements, as well as drafting and enforcing arbitration agreements.

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