The Ninth Circuit Overrules Itself: Employers May Now Use Mandatory Arbitration Agreements As A Condition Of Employment

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On September 30, 2003, in *EEOC v. Luce, Forward, Hamilton & Scripps*, 03 C.D.O.S. 8755, the Ninth Circuit Court of Appeals overruled as "wrongly decided" its prior landmark decision in *Duffield v. Robertson Stephens* (9th Cir. 1998)144 F.3d 1182, which held that the Civil Rights Act of 1991 precluded mandatory arbitration of Title VII claims. The Ninth Circuit acknowledged that it "stood alone" as the only circuit in the nation to conclude that Title VII bars compulsory arbitration agreements as a condition of employment. After carefully reanalyzing the purpose, text and legislative history of the 1991 Act, the Ninth Circuit brought its jurisprudence in line with that of the other circuits and allowed the use of mandatory arbitration to resolve complaints of civil rights violations in the workplace.

Although it is being heralded as such, it may be premature to tout *EEOC v. Luce* as a sound victory for employers. Currently, a bill that seeks to codify portions of the *Duffield* decision awaits Governor Gray Davis's signature. This bill – AB 1715 – would invalidate compulsory arbitration of claims under the Fair Employment and Housing Act and would amend the Act to establish that any waiver of rights or procedures under the Act must be knowing, voluntary, and not made as a condition of employment. In California's current political climate and with the recall election looming, it is impossible to predict the fate of AB 1715. As always, employers still have reason to be vigilant and should keep an eye on this bill as well as future developments in this area of the law. Sheppard Mullin will continue to provide these updates to help employers in that mission.

For more information on this issue, please contact a member of the Labor and Employment Practice Group in one of our offices.

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