Goldman Sachs Gender Discrimination

March 21, 2013 • Legal Updates & Insights

Goldman Sachs Gender Discrimination — Merely a Method: No Substantial Right to Pattern – or – Practice for Plaintiffs

In *Parisi v. Goldman Sachs & Co*, the Second Circuit upheld the use of an arbitrator to settle a dispute in a Title VII gender discrimination case even when the arbitration clause did not allow for class-wide arbitration. The Court found when discrimination is a regular occurrence or pattern rather than an isolated incident, namely a "pattern or practice" it is not a freestanding cause of action – it can be used merely as a method or tool in proving an element of a Title VII claim. Consequently, plaintiffs had no real rights to pursue "pattern-or-practice" and an arbitration agreement that impeded its use remained valid signaling an overall victory for employers trying to enforce arbitration agreements.

Lisa Parisi began her position as Managing Director at Goldman Sachs in 2003. At the beginning of her term she signed a Managing Director Agreement which contained within it an arbitration clause. In 2008 Ms. Parisi's employment was terminated. She initiated proceedings against Goldman Sachs alleging Title VII gender discrimination along with two other female employees who also sued individually and as part of a putative class, alleging a continued "pattern-or-practice" of gender discrimination.

Parisi argued she had a right to pursue her claim under Title VII "pattern-or-practice" which is only available to plaintiffs in a class action. The arbitration clause she argued would stop her from vindicating her statutory right because it barred class arbitration without Goldman Sachs agreement, which would obviously be unlikely. Therefore Parisi argued that the arbitration clause should be invalidated in order to protect her statutory right to pursue a pattern-or-practice claim. The magistrate judge found that although the arbitration clause was valid, stopping class arbitration would make it impossible for Parisi to arbitrate a pattern-or-practice claim and therefore denied her the chance to successfully enforce a substantive right under Title VII.

Goldman Sachs appealed in the Second Circuit where the Court noted two situations in which motions to compel arbitration have to be denied because they would prevent plaintiffs from vindicating a statutory right; (1) Arbitration agreements have been invalidated when they have interfered with the recovery of statutory damages and (2) Arbitration clauses containing class waivers have been held unenforceable because individual arbitration would be cost prohibitive to the point of effectively stopping plaintiffs from bringing such claims.

However the Second Circuit concluded that "pattern-or-practice" is not an independent cause-of-action prompting it to rule that "such a right does not exist". This decision demonstrates the courts unwillingness to invalidate arbitration agreements, even when they forbid discrimination class actions and the strength of the Federal Arbitration Act.

If you find yourself in a similar situation and a victim of on-going discrimination call us on 212-257-6800 to discuss your options.

Douglas H. Wigdor
Partner
WIGDOR LLP
85 Fifth Avenue, New York, NY 10003
T: (212) 257-6800 | F: (212) 257-6845
dwigdor@wigdorlaw.com
wigdorlawcom