

New Jersey Court Upholds Arbitration of Employee's Discrimination Claims Arising from His Use of Medical Marijuana

The Superior Court of New Jersey, Appellate Division, recently upheld a private employer's arbitration provision and found that the employee's claims belonged in private arbitration. This case, *Antonucci v. Curvature Newco, Inc.*, is important because it is the first reported decision in New Jersey to expressly find that the Federal Arbitration Act (FAA) preempts a 2019 amendment to New Jersey's Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -50, which prohibits certain types of restrictions in employment agreements, including arbitration clauses.

The facts of the underlying case – as set forth in the complaint – are straightforward. The employee (Antonucci) was hired by the employer (Curvature) in 2010 and is a "lawful user of medical marijuana." In May 2020, someone anonymously reported that they smelled marijuana on Antonucci, and Curvature asked him to take a drug test. Plaintiff thereafter tested positive for cannabis and was terminated.

Relevant here, however, was that in October 2019, Curvature sent Plaintiff an electronic version of the company's 112-page Codes of Ethics and Conduct and Employee Handbook (the Handbook), which included an Arbitration Agreement as a separate appendix. When Plaintiff sued alleging discrimination, Curvature moved to compel arbitration.

Although he lost in the trial court, on appeal, Plaintiff argued, among other things, that the Arbitration Agreement was unenforceable because it denied him the "procedural" right to a jury trial guaranteed by a 2019 Amendment to the LAD. That specific amendment provides that "any employment contract that waives any substantive or procedural right or remedy relating to a claim of discrimination, retaliation, or harassment shall be deemed against public policy and unenforceable."

Interpreting federal law, the panel disagreed and enforced the Arbitration Agreement against Plaintiff, despite what the LAD stated. As noted, this decision is important because it decided an issue that the courts had not yet addressed; namely, whether an employer

can lawfully compel arbitration of LAD claims in light of the 2019 Amendment. So, despite the efforts of the New Jersey legislature to completely ban arbitration agreements in the employment discrimination arena, federal law overrides that State law, and employers and employees can still agree to arbitrate these claims.

However, the panel was careful to limit its holding to that specific issue. The panel was careful to note that while arbitration agreements of LAD claims may be enforced generally, other contractual restrictions – like, for example, those reducing the time to bring a discrimination claim – may not.

It is therefore important for employers to partner with experienced employment counsel when drafting and reviewing these agreements. For while the employer in this matter was able to have its agreement enforced, the enforceability of such provisions will always require a careful review of the facts and an understanding of the limits of the law.

If you have questions about your employment agreements or would like your agreements reviewed for compliance with these laws, please contact [Peter Frattarelli](mailto:pfrattarelli@archerlaw.com) at 856-354-3012 or pfrattarelli@archerlaw.com, or [Daniel DeFiglio](mailto:ddefiglio@archerlaw.com) at 856-616-2611 or ddefiglio@archerlaw.com.

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