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One Minute Memo®

Texas Don't Hold 'Em: Forum Selection Clause Is Unenforceable

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California courts generally favor forum selection clauses entered into freely by parties and where enforcement is not unreasonable. This general principle is true even if the forum selection clause is "mandatory" and requires a party to litigate its dispute exclusively in the designated forum. The party opposing enforcement of a forum selection clause ordinarily bears the burden of proving why the clause to which it previously agreed should not be enforced.

Contrary to these general principles, on May 28, 2015, in *Verdugo v. Alliantgroup, L.P.*, the California Court of Appeal held that if a dispute involves unwaivable claims under California's Labor Code, the employer seeking to enforce the forum selection clause bears the burden of showing that litigating the claims in the contractually designated forum "will not diminish in any way the substantive rights afforded … under California law."

The Facts

When Texas-based Alliantgroup hired Rachel Verdugo, she signed an "Employment Agreement." The Agreement provided that any dispute regarding Verdugo's employment had to be brought in Harris County, Texas and that the laws of Texas would govern the dispute.

When Verdugo filed a class action lawsuit alleging Labor Code violations involving unpaid overtime, meal and rest breaks, wage statements, and timely termination pay, Alliantgroup moved to stay the action based on its forum selection clause. The trial court found the forum selection clause enforceable and stayed the action.

The Appellate Court Decision

The Court of Appeal reversed the trial court. It held that Alliantgroup bore the burden of showing that enforcing the forum selection clause would not significantly diminish Verdugo's statutory rights. The rationale for this holding was that the Labor Code claims asserted by Verdugo were unwaivable and the forum selection clause had the potential to operate as a waiver. Alliantgroup thus had the burden to prove that the clause did not in fact significantly diminish unwaivable statutory rights.

The Court of Appeal held that Alliantgroup had failed to meet its burden. The Court of Appeal explained that "a comparison is necessary to determine whether enforcing a forum selection clause and choice of law clause would violate California's public policies embodied in its governing statutes." Because Alliantgroup failed to compare Texas and California law on overtime pay, breaks, and other compensation issues raised by Verdugo's claims, and because Alliantgroup failed to compare the policies underlying Texas and California law, or their respective interests in having their laws enforced, Alliantgroup failed to demonstrate that its forum selection clause was enforceable.

What *Verdugo* Means For Employers

Employers should review their forum selection and choice of law clauses to determine whether they will be able to show that they are enforceable if an employee raises unwaivable Labor Code claims. In this case, the Court of Appeal expressly noted that "Alliantgroup could have eliminated any uncertainty on which law a Texas court would apply by stipulating to have a Texas court apply California law in deciding Verdugo's claims, but Alliantgroup failed to do so." Had Alliantgroup provided that disputes were to be heard in Texas, but that the Texas courts were required to apply California law, the result of the case likely would have been different.

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