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## Indeed Can Arbitrate Employee's Hostile Workplace Claims

By **Lauren Berg**

Law360 (January 20, 2021, 6:49 PM EST) -- An Indeed Inc. senior account executive who says she was raped by a colleague will have to arbitrate her claims that the job search company fosters a "misogynistic" and "hostile" workplace, a Manhattan federal judge ruled Tuesday, while also tossing her claims against her alleged rapist.

U.S. District Judge Lewis J. Liman in a 61-page order granted Indeed Inc.'s motion to compel arbitration in Taylor Gilbert's suit, finding that she agreed to arbitrate all disputes against the company when she signed a nondisclosure agreement at the time of her hiring.

Despite Gilbert's argument that the agreement is unenforceable because she refused to sign another more recent agreement that also contained an arbitration provision, Judge Liman said the original agreement contained a statement that it can't be terminated except in writing signed by both parties.

The judge said Gilbert and Indeed never signed anything to that effect, meaning the agreement continued to be in effect throughout the time the claims asserted in her suit accrued.

"Thus, the terms of that agreement and [Gilbert]'s obligation to arbitrate remain binding on her as to all of the claims asserted in this action," Judge Liman said.

Gilbert also argued that New York law makes it unlawful for an employer to require an employee to agree to arbitrate a statutory claim of discrimination, while Indeed said it's up to an arbitrator to decide whether the discrimination claims can be arbitrated. Judge Liman sided with Indeed, saying New York law cannot exempt her federal employment discrimination and state law claims from mandatory arbitration under the Federal Arbitration Act.

Gilbert alleges she was 22 years old when she attended a work training event for Indeed in 2015 and was raped by her senior colleague, Aaron Schwartz, before facing retaliation and sexual harassment when the company failed to do anything about the assault, according to her **complaint filed in May**.

"Indeed has spawned and maintained a misogynistic culture in which women are viewed and treated as sexual objects," Gilbert claims. "Indeed condones and perpetuates an environment in which women who succumb to the sexual advances of their male managers and colleagues are deemed 'bubbly' and rewarded, while those who rebuff or otherwise object to sexual advances and remarks ... are ostracized, marginalized and ultimately fired or forced to resign."

It was at a work training in Connecticut where Gilbert says she was targeted by Schwartz, an Indeed manager based in Austin, Texas. When Gilbert left a night of bar-hopping on Indeed's tab to go to her hotel room, she claims Schwartz "cornered and assaulted her." Despite telling him to stop, Schwartz followed her into her hotel room, where he raped her as she slid in and out of consciousness, the suit alleges.

Gilbert brought claims of retaliation, gender and disability discrimination in violation of Title VII of the Civil Rights Act, the Americans with Disabilities Act, New York's Human Rights Law and state labor laws. She also brought claims of sexual harassment and rape against Schwartz.

In his order Tuesday, Judge Liman also granted Schwartz's motion to dismiss the complaint against him for lack of personal jurisdiction, finding that Schwartz has not done business in New York but has instead lived and worked in Austin for the past six years. Schwartz's infrequent trips to New York for Indeed job training or phone calls with his manager can't serve as a basis for personal jurisdiction, the judge said.

The judge also found that Gilbert's rape, allegedly perpetrated by Schwartz, did not occur within the state of New York, meaning the rape and sexual harassment claims based on the rape can't establish personal jurisdiction over Schwartz, according to the order.

In a Wednesday statement to Law360, Gilbert's counsel from Young & Ma LLP and Golenbock Eiseman Assor Bell & Peskoe LLP said they disagree with the court's decision, "both on behalf of our client Taylor and other victims who continue to be forced into secret arbitration by their powerful employers notwithstanding that the New York Legislature now prohibits these arbitration clauses."

"We are disappointed that Indeed, a company that purports to be a leader in placing employees with employers and provides advice to employers about 'best practices' for the workplace, continues to impose a forced arbitration clause for sexual harassment and discrimination claims on its employees," the attorneys said.

A spokesperson for Indeed told Law360 that the company is pleased with the decision, but declined to comment further on the litigation or arbitration matters.

Counsel for Schwartz did not immediately respond to a request for comment Wednesday.

Gilbert is represented by Tiffany Ma of Young & Ma LLP and Martin S. Hyman and Matthew C. Daly of Golenbock Eiseman Assor Bell & Peskoe LLP.

Indeed is represented by Courtney Stieber and Anne Dana of Seyfarth Shaw LLP and Aron Karabel of Waller Lansden Dortch & Davis LLP.

Schwartz is represented by James M. Lemonedes and Matthew C. Berger of Fox Rothschild LLP.

The case is Taylor Gilbert v. Indeed Inc. et al., case number 1:20-cv-03826, in the U.S. District Court for the Southern District of New York.

--Editing by Breda Lund.

*Correction: A previous version of this story misstated Gilbert's employment status at Indeed. The error has been corrected.*

*Update: This story has been updated with additional counsel information for Indeed.*

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