ARIZONA
EMPLOYMENT LAW LETTER
Part of your Arizona Employment Law Service

June 2021

Employee 'unaware' of signed arbitration agreement compelled to arbitrate

by Jodi R. Bohr
Tiffany & Boscoe, P.A.

When launching an arbitration agreement, you must understand the pros and cons of requiring your employees to sign one as well as which workers should be covered and the hurdles of enforcement. Depending on the potential value of the claim to be arbitrated, the filing fee could result in a five-figure charge just to initiate an action. On the other hand, a properly written agreement could prevent an employee from proceeding with a collective action on behalf of other similarly situated workers. Read on for an example of an arbitration agreement that worked well for an Arizona employer.

Facts

A former supermarket clerk called out from work 13 times in a two-month period because of asthma flareups. He claims the absences should have placed the employer on notice of his need for Family and Medical Leave Act (FMLA) leave.

The employer didn't provide him with notice of his rights under the FMLA. Rather, it removed him from the work schedule allegedly in an attempt to force him to quit and seek other employment. The clerk filed a complaint in the U.S. District Court for the District of Arizona alleging retaliation for exercising his rights under the Act.

Compelling arbitration

In response to the complaint, the supermarket asked the court to dismiss the litigation and compel arbitration. The employer alleged the clerk's claims were subject to mandatory arbitration under his employment agreement.

The clerk asserted he "did not sign an arbitration agreement," and even if he did sign, the agreement wasn't binding because he was "unaware" of its existence. Not so fast, replied the supermarket, which provided not one but two arbitration agreements signed by the employee.

The court noted it must compel arbitration if (1) there is a valid agreement to arbitrate that (2) encompasses the dispute at issue. To determine the validity, courts will look to generally applicable contract defenses such as "fraud, duress, or unconscionability." The clerk failed to identify such defenses.

Responding to the clerk's assertion he was unaware of an arbitration agreement, the court noted:

The mere fact that one does not read a contract which he has signed is not *ipso facto* grounds to invalidate the writing.

Additionally, the clerk never alleged the supermarket misrepresented the agreement's contents. In fact, the court noted, both documents signed by the clerk had the words "arbitration agreement" in the title.

Finally, the court reviewed the operative agreement, which said any employment dispute between the supermarket and the employee "shall be resolved by final and binding arbitration." Therefore, the court dismissed the complaint.

Takeaways

Quite simply, including the phrase "Mutual Binding Arbitration Agreement" as all or part of the title of the agreement the employee is required to sign helps you refute any claim he was unaware of the

existence of the arbitration provisions within the document.

Unfortunately, in situations like the one described above, the arbitration clauses often lead to what is referred to as "satellite litigation." That is, an employee challenges the enforceability of an arbitration clause. Then the parties argue over whether the claims should be subject to arbitration or permitted to proceed in litigation rather than focusing on their substance from the outset. Consequently, the costs of defending against an employee's claim go up.

Jodi R. Bohr is a shareholder with Tiffany & Bosco, P.A. She practices employment and labor law, with an emphasis on litigation, class actions, and HR matters, and is a frequent speaker on a wide range of employment law topics. She may be reached at jrb@tblaw.com or 602-255-6082.