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Articles

Clearing The Path To Arbitration

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Federal and state courts are providing employers with encouraging news regarding the enforceability of mandatory employment arbitration agreements. Last month, the U.S. Supreme Court removed one major obstacle to enforcing employment arbitration agreements in California federal courts. Also, recent decisions from California state courts show a willingness to enforce arbitration agreements, even in the face of strong arguments of procedural or substantive unconscionability.

The Federal Courts

In the late 90's, the Ninth Circuit had established two major roadblocks to the enforcement of mandatory employment arbitration agreements. One road block was jurisdictional - the Ninth Circuit held in *Craft v. Campbell Soup Co.*, 177 F.3d 1083 (9th Cir. 1999) that employment agreements were excluded from the Federal Arbitration Act. Consequently, the Ninth Circuit concluded that federal courts could not preside over suits to enforce arbitration agreements arising from the employment relationship. The second roadblock was more substantive - the Ninth Circuit held in *Duffield v. Robertson Stephens & Co.,* 144 F.3d 1182 (9th Cir. 1998) that civil rights policy prevented employers from forcing employees to arbitrate claims for discrimination.

Last month, in *Circuit City Stores, Inc. v. Adams*, 532 US __ (2001), the U.S. Supreme Court eliminated the jurisdictional roadblock. The Court concluded that the only employment agreements excluded from the Federal Arbitration Act are employment agreements for railroad workers, seaman or other transportation workers. Thus, the vast majority of employment agreements are subject to the Federal Arbitration Act, and therefore federal courts may preside over actions to enforce arbitration agreements arising from most employment relationships.

Nonetheless, the *Duffield* decision still presents a problem to employers in the Ninth Circuit who wish to compel arbitration of employment discrimination claims. As mentioned in our January 2001 Update, however, the *Duffield* decision may be challenged through an appeal of the *EEOC v. Luce Forward* decision.

California State Courts

In August 2000, the California Supreme Court confirmed in *Armendariz v. Foundation Health Psychcare Services, Inc.,* 24 Cal. 4th 83 (2000) that employment arbitration agreements are enforceable in state court as long as they meet certain fairness and due process standards. The *Armendariz* court also noted that courts could sever unconscionable terms from an arbitration agreement if the agreement was otherwise fair. Since the *Armendariz* decision, California courts have enforced employment arbitration agreements despite seemingly strong arguments of unconscionability.

In *Craig v. Brown & Root, Inc.,* 84 Cal. App. 4th 416 (2000), for example, the court upheld an arbitration agreement that the plaintiff claimed was both procedurally and substantively unconscionable. Notably, the employer in that case had announced its arbitration agreement through a mass mailing to its employees' homes. The plaintiff claimed that she never received the mailing and that it would be procedurally unconscionable to force her to abide by an arbitration agreement she had never seen or accepted. The *Craig* court enforced the agreement, finding the employer's evidence of mailing more credible than the plaintiff's claim of non-receipt.

In *Pichly v Nortech Waste LLC*, 87 Cal. App. 4th 599 (2001), modified and rehearing denied (April 4, 2001), the court also upheld an arbitration agreement that was challenged on procedural and substantive grounds. Of particular interest in that case, the court stated it would *assume* the arbitration agreement was fairly negotiated unless the plaintiff proved otherwise. Also, the court upheld the agreement even though it permitted the employer to bring actions for injunctive relief in civil court without expressly providing employees with the same right.

Conclusion

For those employers who still find that arbitration agreements are an effective way to resolve employment disputes in California (and there are many), recent decisions from federal and state courts indicate that those agreements may be enforceable. Although the path is not completely clear in federal courts, at least one road block to enforcing employment arbitration agreements has been eliminated. In state courts, *Armendariz* continues to provide reliable guidance for drafting enforceable arbitration agreements.

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