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ARBITRATION AGREEMENTS

Court of Appeal refuses to enforce arbitration provision in employee handbook

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A hotel worker sued her former employer for sexual harassment, discrimination, and wrongful termination. The hotel asked the trial court to compel arbitration of her claims based on an arbitration provision in its employee handbook. The court denied the hotel's petition to compel arbitration, finding that neither the language of the handbook nor the signed acknowledgment form created an enforceable agreement to arbitrate between the hotel and the worker. The court of appeal affirmed the decision.

Hotel moves to compel arbitration based on employee handbook

January Esparza began work at Shore Hotel in November 2012. On her first day of work, she was given a 52-page employee handbook. The first page of the handbook contained a welcome letter stating, "This handbook is not intend to be a contract (express or implied), nor is it intended to otherwise create any legally enforceable obligations on the part of the Company or its employees." A section titled "Agreement to Arbitrate" spanned pages 3 and 4 of the handbook, was written in all capital letters, and stated in pertinent part, "I further agree and acknowledge that the company and I will utilize binding arbitration to resolve all disputes that may arise out of the employment context."

The arbitration section discussed the scope of disputes subject to arbitration, the qualifications for an arbitrator, and other procedural matters relating to arbitration. It continued, "I understand and agree to this binding arbitration provision, and both I and the company give up our right to trial by jury of any claim I or the company may have against each other."

The handbook also contained basic employment policies such as the hotel's antiharassment, attendance, and payroll policies. The last two pages consisted of a "policy acknowledgment" to be signed by Esparza stating in pertinent part:

This handbook is designed to provide information to employees of Sand & Sea, Inc. (Shore Hotel) regarding various policies, practices and procedures that apply to them[,] including our Arbitration Agreement. . . Neither this manual nor its contents constitute, in whole or in part, either an express or implied contract of employment with Shore Hotel or any employeeI acknowledge that I have received Sand & Sea Inc.'s (Shore Hotel) Employee Handbook. I also acknowledge that I am expected to have read the Employee Handbook in its entirety. . . I also understand that this Handbook is Company property and that it must be returned upon termination of my employment.

When Esparza's employment ended, she sued the hotel for sexual harassment, discrimination, and wrongful termination. The hotel asked the trial court to compel arbitration on the grounds that her claims arose from her employment, and her signature on the handbook acknowledgment constituted a "conspicuous and unambiguous agreement to arbitrate."

Did the handbook create a mutual agreement to arbitrate?

Esparza opposed the hotel's request for arbitration, arguing that she had acknowledged receipt of the handbook but had not agreed to arbitration. The trial court agreed. The hotel appealed the trial court's denial of its petition to compel arbitration, but the court of appeal affirmed.

California has a strong public policy favoring contractual arbitration as long as parties have agreed to arbitrate. The party seeking to compel arbitration bears the burden of proving the existence of a valid arbitration agreement. Courts apply general principles of contract law to the issue, requiring proof by a preponderance of the evidence that both parties have communicated to each other a binding agreement to arbitrate. If a party can show that it did not know it was signing a contract, or that it did not enter into a contract at all, both the contract and its arbitration clause are void for lack of mutual assent.

The hotel claimed that by signing the acknowledgment, Esparza accepted employment and expressly agreed to be bound by the handbook's terms and conditions, including the arbitration provision. A closer examination of the handbook and the acknowledgment suggested there was no such agreement.

Handbook did not establish an agreement to arbitrate

Agreements to arbitrate—like other contracts—must be unequivocally worded in order to withstand court scrutiny. To the extent there is any ambiguity in the language of the agreement, it will be construed against the drafter—in this case, the hotel.

The hotel asserted that by acknowledging receipt of the handbook, Esparza "freely agreed to arbitrate all disputes arising from her employment." But nothing in the handbook indicated to Esparza that it created a binding agreement between her and the hotel. To the contrary, a reasonable interpretation of the welcome letter would be that it meant exactly what it said: that the handbook was not intended to create obligations on the part of the hotel or Esparza, including a legally enforceable obligation to arbitrate.

Furthermore, the handbook provided only "general information" about the hotel's employment policies, and there was no stated requirement that Esparza agree to any of the policies. A boilerplate arbitration clause buried in a lengthy employee handbook was insufficient to imply a waiver of her right to a jury trial.

Acknowledgment did not establish an agreement to arbitrate

Unfortunately for the hotel, the signed acknowledgment did not specifically state that Esparza had agreed to abide by the handbook's arbitration provision. Instead, the form reiterated that the handbook was designed to provide information about the hotel's policies to employees, not that it constituted acceptance of an enforceable arbitration agreement.

The hotel countered that the acknowledgment incorporated the terms and conditions of Esparza's employment, which included an arbitration provision. It reasoned that because she agreed to read the handbook within a week of receiving it and because she continued to work at the hotel after that week had elapsed, she must have implicitly agreed to the arbitration provision. But Esparza was expected to sign the acknowledgment on her first day of work, before reading the handbook, and she did not know its contents, including the arbitration provision, at the time she signed the form.

The court of appeal would not assume that Esparza agreed to be bound by something she had not read. Further, the court distinguished this situation from cases in which employers include an arbitration agreement in a separate appendix to the handbook and emphasize its contractual nature. Shore Hotel, by contrast, included its arbitration agreement in the body of the handbook, as one of many employment-related policies, which by the handbook's own terms were not intended to create "any legally enforceable obligations."

Under those circumstances, the arbitration provision in the employee handbook, including the welcome letter and the acknowledgment, did not create an enforceable arbitration agreement. *Esparza v. Sand & Sea, Inc., et al.* (California Court of Appeal, 2nd Appellate District), 8/22/16.

Bottom line

Public policy may favor arbitration, but in the employment context, courts will closely examine whether employees have given up their right to trial by jury in favor of arbitration. Employers that wish to require arbitration of employment disputes must structure the document to unequivocally establish the existence of a separate enforceable agreement to arbitrate. A handbook serves a complementary but different purpose.

Employment handbooks and arbitration agreements are important tools for businesses looking to manage the risk of employment claims. Both documents should be carefully drafted for maximum clarity and effect. Before attempting to combine the two, you should consult with legal counsel to ensure that the benefits of either document will not be lost because of shortcuts on the front end.

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