

Arbitration Agreements:

Make Sure Your Employees Actually Sign Them

Many employers utilize binding arbitration to resolve employment-related disputes with their employees. The advantages of binding arbitration include savings of time and cost, limited discovery, a more expedited process than court procedures, and, hopefully, smaller attorney's fees.

But in order to compel its employees to arbitrate employment-related disputes, an employer must show that the parties consented to, and actually formed, a valid agreement to arbitrate. A recent California appellate court decision illustrates the importance of ensuring that employees sign a separate written arbitration agreement. *Mitri v. Arnel Management Company*.

Facts of the Case

Amanda Mitri and Eric Eppel sued their former employer, Arnel Management Company, Arnel's owner and three of Arnel's supervisors for sexual discrimination, sexual harassment, invasion of privacy and defamation in California state court. The company and supervisors filed a motion to compel arbitration on the grounds that the employees entered into a written arbitration agreement with Arnel, which required binding arbitration of any employment-related disputes. In support of their motion to compel arbitration, the defendants pointed to the employee handbook and the acknowledgement signed by the employees that they read and understood the contents of the employee handbook.

The employee handbook contained an arbitration provision outlining, in general terms, that all employment-related disputes would be submitted to and resolved by binding arbitration, and that the arbitration would be conducted by the American Arbitration Association. But the employee handbook also stated that “[a]s a condition of employment, all employees are required to sign an arbitration agreement.” It further stated that “employee will be provided a copy of their signed arbitration agreement.” No signed arbitration agreements were submitted to the court.

Despite the lack of any signed arbitration agreements, the company argued that the documents submitted in support of their motion (the employee handbook and the acknowledgment signed by the employees) established the existence of a binding arbitration agreement. The trial court denied the motion on the grounds that the employee handbook was not part of the contract of employment because the provision in the employee handbook, including the arbitration provision, could be changed or revised without notice whenever Arnel determined it was warranted. The defendants appealed.

Where’s the Beef?

On appeal, the appellate court found that the documents submitted did not show that the employees ever consented to binding arbitration. In fact, to the contrary, the documents showed an intent on the part of Arnel to have its employees sign a *separate* arbitration agreement to effectuate Arnel’s policy of arbitrating employment-related disputes.

More importantly, there was no evidence of the existence of such an arbitration agreement. The appellate court refused to create a term of a contract between the parties

that the evidence did not show was ever agreed upon by them. The decision of the trial court was upheld.

Your Handbook Is Not Enough

What is the lesson to be learned from the *Mitri* decision? Don't assume that an arbitration provision in your employee handbook will be enough to compel your employees to resolve employment-related disputes by binding arbitration, even if your employees have signed an acknowledgment affirming that they have read and understood the employee handbook. This is especially true if the employee handbook makes a reference to a separate arbitration agreement.

After the *Mitri* decision, the reality is that arbitration provisions in employee handbooks, standing alone, may not be sufficient to establish a valid and binding arbitration agreement in California. Accordingly, in order to ensure that your employees will be required to submit any employment-related disputes to binding arbitration, require them to sign a separate written arbitration agreement.

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