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Arbitration Clauses in Employment Handbooks With Contract Disclaimer Are Unenforceable

In a decision that will affect New Jersey employers seeking to arbitrate employees' claims, the Appellate

Division, earlier this month, in *Morgan v. Ramours Furniture Company, Inc.*, held that arbitration clauses contained in employee handbooks are unenforceable where the handbook also includes a disclaimer that it does not create a contract.[1] Accordingly, New Jersey employers whose handbooks currently include arbitration clauses should consider carefully, replacing them with either arbitration clauses in an employment application, and/or with a stand-alone agreement.

Given the potential for additional disputes, however, part of that process should include determining whether and how to implement such agreements with existing employees. The opinion, which is rife with truisms, highlights the inclination of New Jersey courts to take notions of fairness and equity into their decision making.

Case Facts

The decision arose from the trial court's denial of Raymours Furniture Company's ("Raymours") motion to compel arbitration of plaintiff's claim alleging age discrimination and retaliation in violation of the New Jersey Law Against Discrimination ("LAD"). Raymours sought arbitration based on a provision in the company's employee handbook. Although the defendants appealed the denial of their motion to compel arbitration on numerous grounds, the Court focused primarily on the following few facts.

Employee Makes an Internal Complaint, Then is Fired for Refusing to Sign an Arbitration Agreement

Plaintiff contended that upon complaining of age discrimination on the job, defendants gave him an ultimatum –he could either sign a stand-alone arbitration agreement, or be discharged. When plaintiff refused to sign the agreement, Raymours followed through and terminated his employment. Plaintiff responded by filing suit.

Raymours Moves to Compel Arbitration Under the Handbook – Despite the Handbook's Disclaimers

The Company moved to compel arbitration of the plaintiff's claims based on an arbitration clause and waiver of the right to sue, included in the company handbook. The handbook, however, was prefaced with the following contract disclaimer:

> Nothing in this Handbook or any other Company practice or communication or document, including benefit plan descriptions, creates a promise of continued employment, employment contract, term or obligation of any kind on the part of the Company.

Likewise, the company's annual electronic acknowledgement of receipt of the handbook included similar contract disclaimer language that the employee,

> Understand[s] that the rules, regulations, procedures and benefits contained therein are not promissory or contractual in nature and are subject to change by the company.

Court's Analysis in Affirming the Denial of the Company's Motion to Compel Arbitration

In rendering its decision, the Court invoked principles of equity – finding that it would be inequitable to allow an employer to take contrary positions vis-à-vis the contractual nature of the handbook according to whichever position better suited the employer at the time (i.e., claiming that the handbook *is not* a contract when sued by an employee for breach of contract, but then insisting that the handbook language *is* contractual when seeking to enforce the handbook's arbitration provision).

The Court also relied on contractual principles in arriving at its decision, and explained that its decision was wholly consistent with the Federal Arbitration Act – citing to a recent Fourth Circuit decision refusing to enforce a handbook-based arbitration clause, based on nearly identical circumstances.[2]

Take-Away

To be enforceable, the agreement to arbitrate must be in an unambiguous contract. The *Morgan* opinion suggests in dicta that "had the plaintiff executed the stand-alone arbitration agreement presented to him when a rift formed in the parties' relationship, a different outcome would likely have followed." When it comes to handbooks and arbitration clauses, the Appellate Division made it clear that employers cannot have their cake and eat it too.

[1] *Morgan v. Ramours Furniture Company, Inc.*, A-2830-14T2, 2016 N.J. Super. LEXIS 1 (App. Div. Jan. 7, 2016).

[2] *Lorenzo v. Prime Commc'ns, L.P.*, 806 F.3d 777 (4th Cir. 2015).

Tags: Amy Hatcher, Contract Disclaimer, Employment Handbooks, Lorenzo v. Prime Commc'ns, Morgan v. Ramours Furniture Company Inc., New Jersey Law Against Discrimination

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