



Nevada Arbitration Clauses May Need Affirmative Agreement

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Nevada has amended its law to require that any agreement containing an arbitration clause include “specific authorization for the provision which indicates that the person has affirmatively agreed to the provision.” An arbitration clause that fails to include such an authorization is “void and unenforceable.” Nev. Rev. Stat. § 597.1(1), (2) (2013). Collective bargaining agreements are exempt from the new requirement.

This represents a significant change in Nevada law. Previously, enforcement of arbitration agreements in Nevada had been governed by the state’s Uniform Arbitration Act (see Nev. Rev. Stat. Chapter 38) and, to the extent applicable, the Federal Arbitration Act (9 U.S.C. §§ 1-14). Under the state Act, specific authorization was not necessary (“An agreement contained in a record to submit to arbitration any existing or subsequent controversies arising between the parties to the agreement is valid, enforceable and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.” Nev. Rev. Stat. 38.219.1.) The Federal Arbitration Act similarly provides that an agreement to arbitrate “shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract” (9 U.S.C. § 2).

Because the amended state law imposes special conditions on the enforceability of agreements to arbitrate, it arguably preempted by the Federal Arbitration Act. See *Doctor’s Assocs., Inc. v. Casarotto*, 517 U.S. 681, 686 (1996). In any event, its enactment raises practical considerations for employers that maintain arbitration policies. First, it is not clear whether the statute will apply retroactively. The Legislature did not express this intent in the law’s text, but as it declares that any agreement lacking “specific authorization” is void, a court may give the statute a literal reading, and therefore, retroactive effect. Second, employers should consider modifying agreements to comply with the new law before offering them to new hires or existing employees so that the individuals signing the agreements specifically acknowledge the arbitration provision. Third, employers who previously have relied on handbook policies or other arbitration agreements that are not executed independently should consider utilizing individual, stand-alone agreements.

Employers should review their arbitration agreements with counsel to determine if it is necessary to revise them to comply with the new law.

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