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Articles

Mandatory Employment Arbitration Is Legal

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In a recent decision, *EEOC v. Luce, Forward, Hamilton & Scripps,* the Ninth Circuit U.S. Court of Appeals (which covers California) ruled that employers may require employees to sign mandatory arbitration agreements for race, sex or age discrimination claims as a condition of their employment. In so ruling, the Ninth Circuit concluded that a prior decision by the Court, *Duffield v. Robertson Stephens*, which reached a contrary result no longer remained good law. The Ninth Circuit further stated that the ruling was consistent with sister federal court of appeals as well as the Supreme Court of California.

In 1997, Luce, Forward, Hamilton & Scripps ("Luce Forward") extended a conditional offer of employment to Donald Scott Lagatree ("Lagatree") for a position as a full-time legal secretary. Lagatree accepted. On Lagatree's first day of work, Luce Forward presented him with its standard offer letter which included the terms and conditions of his employment. The offer letter also included an arbitration provision requiring Lagatree to submit all "claims arising from or related to his employment" to binding arbitration. Lagatree refused to sign the arbitration agreement. He claimed the arbitration agreement was unfair.

Lagatree continued to work at Luce Forward for two days as the firm considered his refusal to sign the arbitration agreement. After two days, Lagatree met with the human resources director and asked if the arbitration provision could be stricken. The human resources director replied "no," and informed Lagatree that he must sign the provision to remain an employee of Luce Forward. Lagatree initially indicated that he would sign, but eventually refused to do so. Luce Forward then withdrew its job offer.

In 1998, Lagatree filed a complaint with the Equal Employment Opportunity Commission ("EEOC") alleging wrongful termination based upon his refusal to sign the arbitration agreement. The EEOC agreed and filed a lawsuit on behalf of Lagatree. Relying on *Duffield*, the trial court issued an injunction prohibiting Luce Forward from requiring employees to agree to mandatory arbitration.

The Ninth Circuit reversed. Relying on the U.S. Supreme Court's 2001 decision, *Circuit City Stores v. Adams*, the Ninth Circuit held that Congress did not intend to exempt employment discrimination claims from mandatory arbitration. In *Circuit City,* the U.S. Supreme Court held that the 1920 Federal Arbitration Act ("FAA") applied to all employment contracts. The U.S. Supreme Court further noted that arbitration agreements can be enforced under the FAA without running afoul of federal statutes prohibiting discrimination against employees. The Ninth Circuit therefore reasoned that, by agreeing to mandatory arbitration rather than a judicial forum, an employee does not lose anything. An aggrieved employee may still seek all the remedies for discriminatory conduct afforded by federal law in an arbitration. The Ninth Circuit came to the inevitable conclusion that *Duffield*, must be overruled.

Arbitration proceedings often lead to a quicker, less expensive resolution of the matter. The Ninth Circuit pointed out, however, that not all mandatory arbitration agreements will be enforced. A mandatory arbitration agreement must comply with traditional principles of traditional contract law, including whether its provisions are unconscionable to the employee. If an employer is in doubt regarding the validity of a mandatory arbitration agreement, we recommend that you have experienced employment counsel review your agreement to ensure its validity if challenged.

Practice Areas

Labor and Employment