

Is Your Employment Arbitration Agreement Enforceable?

Thomas Domin worked as a finance director for River Oaks Imports, Inc. from May 2009 until he was discharged in April 2010. Domin filed suit in federal court alleging that he was sexually harassed while employed by the automobile dealership and fired in retaliation for complaining about the harassment. The automobile dealership responded to the lawsuit by producing a copy of an arbitration agreement signed by Domin that expressly stated Domin agreed to arbitrate employment disputes, including “claims of discrimination and harassment.” The automobile dealership requested that the court put a hold on the litigation and require the parties to arbitrate the dispute.

The court found the arbitration agreement was flawed and unenforceable. As a result, the automobile dealership now must defend the lawsuit pending in federal court, despite its efforts to have such employment disputes decided through binding arbitration. Employers should heed the court’s ruling because it provides simple guidance on how to execute *enforceable* binding arbitration agreements.

There is no doubt that employers and employees can agree to submit federal claims, including discrimination and harassment claims under Title VII, to arbitration. *Gibson v. Neighborhood Health Clinics, Inc.*, 121 F.3d 1126, 1130 (7th Cir. 1997). However, the arbitration agreement must satisfy the basic requirements governing contract formation. That is, there must be a valid offer, acceptance, and consideration for entering into the agreement. In Domin’s case, the court determined that the flaw fatal to the automobile dealership’s arbitration agreement was that the dealership did not give any consideration for Domin’s agreement to arbitrate. In other words, Domin did not receive a benefit for entering into the agreement.

The court noted that employment itself can be “consideration” for entering into an agreement to arbitrate. *Melena v. Anheuser-Busch, Inc.*, 219 Ill.2d 135, 151-52 (Ill. 2006). Unfortunately for the dealership, its arbitration agreement expressly stated that the arbitration agreement was not required as a condition of Domin’s employment. The auto dealership could not point to any benefit or payment provided to Domin for agreeing to arbitrate his employment dispute, so the court refused to enforce the arbitration agreement. The dealership attempted to rely on other court decisions that found sufficient consideration when the arbitration agreement binds both parties to submit legal disputes to arbitration. The Judge rejected such arguments because the dealership’s agreement only required the employee to submit claims to binding arbitration. The fact an arbitration agreement is one-sided does not necessarily make it unenforceable, but the employer must be able to show that a separate form of consideration was provided to the employee.

The auto dealership did one thing right by requiring employees to execute an arbitration agreement that was contained in a document separate and distinct from its Employee

Handbook and Employee Handbook Acknowledgement Form. If an arbitration agreement arises out of the Employee Handbook or is connected with the Handbook, the employee can easily argue that the express contract disclaimers contained within the Employee Handbook apply to the arbitration agreement. In other words, the express language states that the arbitration agreement cannot be construed as a contract (i.e. the arbitration agreement is unenforceable).

Employers that desire to resolve employment disputes through binding arbitration rather than through the courts should closely review the arbitration agreement to ensure it is enforceable should an employee file an employment claim in state or federal court. As the court explained in *Domin's* case, employers can easily make arbitration agreements enforceable by requiring employees to enter into the agreement as a condition of employment or continued employment. Employers can also secure consideration for the arbitration agreement by expressly providing an employee with an added benefit (e.g. additional vacation leave) or extra compensation for entering into the arbitration agreement. An enforceable employment arbitration agreement can then be used to stay employment-related lawsuits.

If you have questions about arbitration agreements or questions about any other employment-related matter, please contact Jon D. Hoag, Esq. of SmithAmundsen LLC via email at jhoag@salawus.com. Jon Hoag is an attorney at SmithAmundsen LLC in the labor and employment practice group.