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TIME TO CHECK YOUR EMPLOYEE ARBITRATION AGREEMENTS: FIFTH CIRCUIT COURT OF APPEALS INVALIDATES ARBITRATION AGREEMENT SIGNED ONLY BY EMPLOYEE, BUT NOT EMPLOYER

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In a decision that will have employers checking personnel files to make sure their arbitration agreements are signed by both the employer and employee, the Fifth Circuit Court of Appeals, the Federal appellate court that oversees appeals for Texas, Louisiana, and Mississippi, invalidated an arbitration agreement, which was only signed by the employee. In *Huckaba v. Ref-Chem, L.P.*, the Fifth Circuit evaluated the elements of a valid arbitration agreement in a sexual harassment case, holding that all elements of a valid contract must be present, including the element of execution.

In its opinion invalidating the arbitration agreement, the Fifth Circuit was persuaded by three provisions contained in the agreement under scrutiny:

- 1) The agreement stated: ***“by signing this agreement the parties are giving up any right they may have to sue each other,”***
- 2) A clause in the agreement prohibited modifications unless they are ***“in writing and signed by all parties,”*** and
- 3) There was a ***signature block for both the employee and the employer.***

The Court found that the signature block, along with the language that referred to both parties signing the agreement to give up the right to sue each other or to modify it, supported the intent of the parties to require signatures of both, and noting that this was an agreement that the employer drafted.

Bottom Line for Employers

The words that you use in an arbitration agreement matter. If the agreement says that the parties will be bound as a result of their signature on the bottom of the agreement, then the agreement should be signed by both parties. Employers should also consider whether two signatures are necessary on the arbitration agreement. Perhaps the challenge to the arbitration agreement could have been avoided if the agreement had one signature block for the employee, spelled out the terms of acceptance and the intention of the employer to be bound by the arbitration agreement.

With the recent attention given to arbitration agreements and class waivers, employers could benefit from an audit of their current arbitration agreements to assure that they are appropriately signed, executed and that they include the most up-to-date language held to be enforceable by state and federal courts.

ABOUT THE AUTHOR



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