Insight

IN-DEPTH DISCUSSION

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California Court of Appeal Rules Arbitration Agreement In Employee Handbook Is Not Enforceable

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On August 22, 2016, a California Court of Appeal held that an arbitration agreement in an employee handbook did not create an enforceable agreement to arbitrate. *Esparza v. Sand & Sea, Inc. et al.,* B268420 (Aug. 22, 2016). The employee handbook at issue stated, "[T]his handbook is not intended to be a contract . . . nor is it intended to otherwise create any legally enforceable obligations on the part of the Company or its employees." Although the employee signed the handbook acknowledgement form, which mentioned the arbitration agreement contained in the handbook, the form did not state that the employee agreed to the arbitration. As such, the appellate court held that the trial court properly denied the employer's petition to compel arbitration. This case emphasizes the importance of employers having standalone arbitration agreements for employees or removing landmines that may be lurking in their handbooks.

Employee Handbook

On her first day of work, the employee received an employee handbook. The first page of the handbook contained a welcome letter, which stated in part:

> This handbook replaces and supersedes all prior verbal descriptions, written policies and other written materials and memorandum [sic] that may have been distributed, unless otherwise notes [sic]. *Employees should understand, however, that this handbook is not intended to be a contract (express or implied), nor is it intended*

> *to otherwise create any legally enforceable obligations on the part of the Company or its employees*. . . . Welcome aboard!

The rest of the handbook discussed various policies, including an "Agreement to Arbitrate," which provided that all disputes arising out of the employment context must be submitted to binding arbitration.

The last two pages of the 52-page handbook contained two identical policy acknowledgement forms: one acknowledgment form was labeled the employer copy, the other acknowledgement form was labeled the employee copy. The acknowledgements stated:

> This handbook is designed to provide information to employees of [the Company] regarding various policies, practices and procedures that apply to them including our Arbitration Agreement. . . . *Neither this manual nor its contents constitute, in whole or in part, either an express or implied contract of employment with [the Company] or any employee.*

The acknowledgements also stated:

> I acknowledge that I have received [the Company's] Employee Handbook. *I also acknowledge that I am expected to have read the Employee Handbook in its entirety no longer after [sic] one week after receiving it,* and that I have been given ample opportunity to ask any questions I have pertaining to the contents of the employee handbook.

The employee signed the policy acknowledgement forms. After her employment ended, she filed a complaint against her employer alleging causes of action for sexual harassment, sex discrimination, wrongful termination, and intentional infliction of emotional distress. The employer filed a petition to compel arbitration. The plaintiff opposed the motion on the basis, among other arguments, that she did not assent or agree to arbitration, but merely acknowledged that she would read the handbook.

Analysis

In concluding that the arbitration provision was unenforceable, the appellate court relied on *Mitri v. Arnel Management Co.,* 157 Cal. App. 4th 1164 (2007). In *Mitri,* the employer sought to compel arbitration based on a handbook that contained a section titled, "Arbitration Agreement." The "Arbitration Agreement" section provided that all employees would be given a copy of an arbitration agreement that they were required to sign. In that case, the employer failed to provide any evidence of the signed arbitration agreement.

The court in *Esparza* found that Mitri was on point in two respects. First, the language in the Company's handbook—like the handbook in *Mitri*—indicated there was no intent to establish an arbitration agreement. In *Mitri*, the handbook referenced a separate agreement and stated that employees would be provided a copy of their signed arbitration agreement. As such, the court in *Mitri* concluded that the handbook provision did not constitute an agreement to arbitrate.

Here, the welcome letter explicitly stated that the handbook "is not intended to be a contract (express or implied), nor is it intended to otherwise create any legally enforceable obligations on the part of the Company or its employees." Applying contract law, the appellate court concluded that this language was clear and explicit: the welcome letter was not intended to create any legally enforceable obligations, including an obligation to arbitrate.

Second, the *Mitri* handbook acknowledgement failed to reference an agreement by the employee to abide by the arbitration agreement provision in the handbook. The court in *Esparza* found that the

acknowledgement for the Company's handbook—like the acknowledgement in *Mitri*—also undermined any argument that the handbook created a mutual agreement to arbitrate. The handbook acknowledgement stated that the handbook was merely intended to provide information to employees about policies, including the arbitration agreement. Furthermore, the handbook acknowledgement stated that employees were expected to read the handbook within one week, thereby implicitly acknowledging that employees did not know the contents of the handbook at the time they signed the acknowledgement. Additionally, the handbook acknowledgement stated that the handbook was company property which had to be returned upon termination of employment, thereby giving the plaintiff no notice that she was bound by the arbitration agreement after her employment ended.

The court differentiated *Esparza* from other cases in which arbitration agreements in employee handbooks were enforceable. *See 24 Hour Fitness, Inc. v. Superior Court,* 66 Cal. App. 4th 1199 (1998); *Serpa v. California Surety Investigations, Inc.,* 215 Cal. App. 4th 695 (2013). The court reasoned that these cases never considered whether the parties had assented to an arbitration agreement in the first place. Instead, they only addressed the issue of defenses to the enforceability of existing arbitration agreements. As a result, the court found that these cases were not on point.

Recommendation

Employers seeking to create enforceable arbitration agreements with their employees should either have the arbitration agreements in a standalone document or ensure that agreements contained in a handbook are not undermined by "not a contract" language meant to affirm at-will employment which, if overbroad—as was the language in *Esparza*—can be used to thwart the arbitration agreement's enforceability. Almost all employee handbooks contain an at-will employment policy, but employment at-will does not mean that an arbitration agreement signed by an at-will employee is unenforceable. It is sufficient to state that employment is at-will, leaving it at that. Stating that the handbook contains no contractual commitments at all may unintentionally lead to the result in *Esparza*. Employers should have their attorneys review not only their arbitration agreements but also their handbooks to ensure that "not a contract" landmines are edited or removed.