



Arbitration Provisions In Employee Handbooks Unenforceable

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The New Jersey Appellate Division recently made it clear that arbitration provisions contained in employee handbooks are not likely to be enforceable in New Jersey.

On January 7, 2016, the Appellate Division released its decision in Morgan v. Raymours Furniture Co., Inc. By way of background, Morgan sued his former employer, Raymour & Flanigan, and two individual supervisors, alleging age discrimination and wrongful termination. Raymour moved to compel arbitration on the basis of an arbitration provision in its employee handbook. Morgan acknowledged he received the handbook three times in three years.

As is common in employee handbooks, the Raymour handbook contained an express disclaimer that “nothing in [the] handbook or any other company practice or communication or document . . . create[d] . . . [an] employment contract.” Further, when electronically acknowledging receipt of the Raymour handbook, employees agreed only that they received a copy of the handbook and understood that the rules, regulations, procedures, and benefits in the handbook were “not promissory or contractual in nature and . . . subject to change by the company.”

In 2014, the New Jersey Supreme Court held that an arbitration agreement is only enforceable if an employee clearly and unambiguously agrees to waive the right to sue. Applying this standard, the Morgan court held that the arbitration provision in the Raymour handbook could not be considered Morgan's clear and unambiguous agreement to waive his right to sue. The court acknowledged that employers typically insert disclaimers to prevent handbooks from creating implied contracts of employment. However, the court found that it was inequitable for Raymour to argue that its written handbook was not contractual, while simultaneously contending that its employees contracted away the right to sue by acknowledging receipt of the same handbook. As the court quipped, "sauce for the goose is sauce for the gander."

The court also rejected Raymour's contention that Morgan's three acknowledgments of receipt demonstrated his clear agreement to arbitrate his employment claims. To the contrary, the court found that it would be unfair to construe an employee's general acknowledgment of a handbook as the employee's clear and unambiguous agreement to waive the right to sue. The court held that the arbitration provision was unenforceable because the handbook's disclaimers prevented it from serving as proof of the employee's unambiguous waiver of the right to sue.

The Morgan decision is consistent with a trend in other jurisdictions. For example, in late 2015, the 4th Circuit held in Lorenzo v. Prime Communications that an arbitration agreement in an employee handbook was unenforceable because the employee's signature expressly acknowledged that the handbook did not create a contract. Interpreting North Carolina contract law, the 4th Circuit found that any implied contract created by the employee's continued employment after receipt of the handbook was nullified by her signature on the acknowledgment form expressly agreeing that neither she nor her employer were bound by the terms of the handbook.

These decisions highlight the importance of stand-alone arbitration agreements for employers who want to arbitrate disputes with their employees. Many employers favor arbitration over litigation in court for a variety of reasons. The Morgan and Lorenzo decisions create a perhaps insurmountable challenge for employers who rely on handbook arbitration provisions like Raymour's to protect themselves from lawsuits. Prospectively, New Jersey employers who desire to arbitrate employment disputes should require all employees to sign a separate, stand-alone arbitration agreement in which the employee clearly and unambiguously waives their right to sue and agrees to arbitrate.

If you have any questions about how this decision could affect your organization, or to assist you in drafting stand-alone arbitration agreements and/or revising your employee handbook, please contact [Scott Ohnegian](#), [Daniel Zappo](#), or any member of Riker Danzig's [Labor & Employment Group](#).

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