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What Notice Is Required for Mandatory Employee Arbitration?

Judge Abraham J. Gafni (Ret.)

Increasingly, employers are seeking to impose mandatory arbitration provisions to resolve disputes with employees. Often, however, those employees object to arbitration and prefer a trial in court. They contend that the arbitration provisions the employer is imposing are unenforceable not only because of alleged unconscionability but also because the employees were not made aware of these provisions or their applicability to them.

Recently, a federal district court in the Sixth Circuit was confronted with such a notice problem. It issued a ruling that should cause employers generally to reconsider the adequacy of the procedures by which they advise their employees of these dispute resolution procedures.

Cerjanec v. FCA, US, 2017 Case Number: 2:17-cv-10619 (E.D. Michigan, Dec. 15, 2017) involved four current or former employees of Fiat, Chrysler Automobiles (FCA), who, as part of a class, contended that an employee evaluation policy at FCA resulted in older employees receiving lower evaluation scores. This, they claimed, adversely impacted their employment opportunities and, in addition, resulted in age discrimination.

In responding to these claims, FCA sought to compel arbitration. It contended that the named employees were subject to the company's mandatory arbitration policy.

In its opinion, the district court first reviewed four general principles relating to the formation of an agreement to arbitrate. These were:

- The Federal Arbitration Act (FAA) "embodies the national policy favoring arbitration and places arbitration agreements on equal footing with all other contracts."
- As arbitrations are matters of contract, a party may not be required to submit to arbitration any dispute to which s/he has not so agreed.
- Employee-related statutory claims such as those alleging age discrimination under the Age Discrimination in Employment Act of 1967 (ADEA) are enforceable under the FAA.
- As arbitration agreements are contracts, the court will review their existence and applicability according to the applicable state law of contract formation.

All of the named employees in this action had been employed before 1995. When they were hired, at least three of the four had signed employment applications in which they agreed to follow all "orders, policies and regulations." **READ MORE**

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