Employee Acceptance of Handbook Arbitration Provisions: Part 2

Hon. Abe Gafni

In my Sept. 23 article in *The Legal Intelligencer* titled, "When Does an Employee 'Accept' Employee Handbook Arbitration Provisions" I noted that courts have generally held that mandatory arbitration provisions between an employer and employee, when properly drawn and presented, are enforceable. Employers, however, often fail in their attempts to enforce such provisions because they cannot demonstrate that they have satisfied a basic element in making a contract under state law, i.e., securing the acceptance of the employee.

To illustrate this situation, I cited *Shockley v. PrimeLending*, 929 F3rd 1012 (8th Cir., 7/15/19), in which the court concluded that under Missouri law, employee Jennifer Shockley's acceptance could not be assumed, notwithstanding that she had twice accessed the employer's handbook that contained the arbitration provisions and a hyperlink to the full text of the handbook. In addition, by accessing the handbook she had generated an acknowledgment of its review. Nonetheless, there was no evidence that she had ever actually reviewed the handbook or opened and reviewed its full text.

The court held that an employee's general document review and the system's computer-generated acknowledgment did not create an unequivocal acceptance. Rather, further steps must be taken by the employer to support a finding that not only was the employee advised of but also presumably understood and by some deed or act expressly accepted the terms of the agreement. Otherwise stated, while silence or continuation of employment do not ordinarily manifest the necessary assent to the offer of an arbitration provision, continued employment may constitute acceptance where the employer sufficiently informs all of the employees that such continued employment constitutes acceptance. **READ MORE..**

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