

When Does an Employee 'Accept' Employee Handbook Arbitration Provisions?



Hon. Abe Gafni (Ret.)

Many companies prefer mandatory arbitration programs for the resolution of disputes between employer and employee; and, courts have made clear (often to the consternation of the employees) that such provisions, properly drawn and presented, are enforceable.

A recent case from the U.S. Court of Appeals for the Eighth Circuit reflects, however, that such mandatory arbitration provisions will fail if in their preparation and presentation, the employer has not satisfied the basic elements required in the making of a contract under state law.

That case, *Shockley v. PrimeLending*, 929 F. 3rd 1012, (8th Cir., July 15, 2019), dealt with employer PrimeLending seeking to rely on mandatory arbitration provisions contained in its online employee handbook. (It should be noted that the considerations discussed herein apply to both paper and online handbooks.)

Jennifer Shockley had been employed by PrimeLending for approximately one year from June 2016 through July 2017. PrimeLending had an accessible computer network that contained employee-related information, including a handbook.

The handbook recited two provisions relevant to this case:

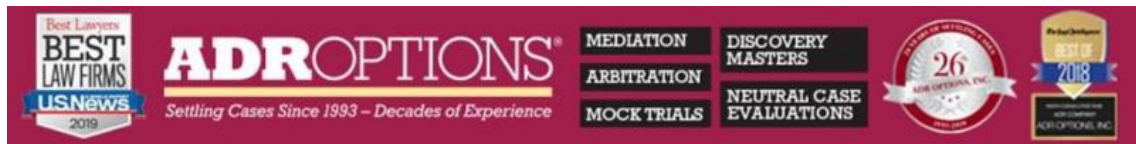
- A "dispute resolution/arbitration clause" (arbitration provision) under which the parties would resolve any dispute exclusively through final and binding arbitration on an individual basis, and waived their right to trial by judge or jury as well as the right to initiate a class, collective, representative or private attorney general action.
- A "control of decisions" provision (delegation provision), which accorded to the arbitrator (and not to any court or agency) the exclusive authority to resolve any claim relating to the

interpretation, applicability enforceability or formation of the arbitration provision including any claim that all or any part of it was void or voidable.

Shockley sued PrimeLending for violating the Fair Labor Standards Act alleging that she had not been paid all of her earned wages and overtime pay. [READ MORE..](#)

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