PUBLICATION

Sixth Circuit Overturns Employer's Litigation Waiver for Lack of Detail

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The Facts

On April 26, 2010, the United States Court of Appeals for the Sixth Circuit, which encompasses Kentucky, Michigan, Ohio and Tennessee, ruled that companies that require their employees to grieve or arbitrate their employment claims must provide them with sufficient information at the time of their acceptance to constitute a "knowing and intelligent" waiver.

In its unpublished opinion, *Alonso v. Huron Valley Ambulance, Inc.*, Civil Action No. 09-1812 (6th Cir. April 26, 2010), the Sixth Circuit overruled a district court's holding that Alan Alonso and his wife had knowingly waived their rights to sue their employer when they completed an employment application which obliged them to submit all employment-related disputes to their employer's internal grievance review board (Board) as their exclusive remedy. However, the application contained no information about the Board or the procedures the Board would follow in place of a judicial proceeding. Rather, that information was only generically provided to them via an employee handbook the Alonsos were issued nearly a month after they were hired, which in turn directed them to a more detailed policy located online. Even then, the policy never informed employees of their right to revoke their waivers notwithstanding the Sixth Circuit's longstanding preference for such provisions. See *Walker v. Ryan's Family Steak Houses, Inc.*, 400 F.3d 370 (6th Cir. 2005).

The Reasoning

In its ruling, the Sixth Circuit focused on the fact that the employees' waiver could not have been "knowing" or "intelligent" given the absence of information provided to them *at the time they signed the waiver*. This was true, the Court held, even though the Alonsos provided no evidence that they did not understand the waivers and, indeed, had successfully utilized the grievance process on multiple occasions prior to initiating their lawsuit.

The Takeaway

While the *Alonso* case is unpublished and its precedential value is therefore limited, employers within and outside the Sixth Circuit would be well-advised to consider the Court's reasoning when reviewing their own litigation and/or jury waiver policies. To that end, employers should: (1) provide sufficient information to applicants/employees of the procedures and limitations of the resolution process; (2) offer signatories at least three days to consider such provisions; (2) plainly describe the waiver and alternate process in a manner calculated to be understood by the average individual; (3) consider encouraging recipients to seek the counsel of an attorney; and (4) consider providing applicants/employees with an opportunity to revoke their waivers within a discrete period of time.

Baker Donelson's labor and employment attorneys are experienced in drafting and implementing these and related employment policies. We give you what boutique labor and employment firms can't: a set of attorneys who are not only dedicated to the practice of labor and employment issues, but who can reach into an integrated and experienced team of professionals to assist you in every other aspect of your legal business needs. We set ourselves apart by valuing your entire company. And when it comes to your company's most

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