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EMPLOYMENT NEWS ALERT

3rd Quarter 2009 Brian E. Curtis, Esq.

Arbitration Clauses in Employment Agreements

If They Sign It, You Will Win

Employers é if you want your arbitration agreements to hold up, two things are crucial! First, you must be able to point to a clear and unambiguous policy to arbitrate discrimination claims. Second, you must be able to prove that the employee actually knows about the policy. This Courts have recited this *ad nauseum*, but employers still find creative ways to screw it up.

In Kirleis v. Dickey, McCamey & Chilcote, P.C., decided March 24, 2009 by the 3rd Circuit Court of Appeals, the plaintiff was a female partner (and long time employee) in the defendant law firm. She sued for sexual harassment. Her firm tried to force her out of court and into arbitration. They failed. The arbitration "agreement" was contained in the partnership's by-laws, which Kirleis swore she never saw before the lawsuit was filed. The firm couldn't prove otherwise, so the case stayed in court.

While I generally disagree with the school of thought that arbitration is a superior alternative to litigation ï as many attorneys claim - if your organization decides that it would prefer arbitration, you must pay attention to the details in the HR policies so that the Company can actually get there. On this one, there really is just no excuse. The plaintiff was an attorney, highly educated, and a long-term employee. She was certainly capable of understanding an arbitration agreement if it had been shown to her. The fact that it wasn't ï or if it was and the firm just could not prove it - is mind-blowing. It is also some pretty sloppy legal work on the part of the firm. Sloppy or not, many professional practices and small businesses are loosely managed. Most times, an óopen-door policyô just invites employees to abuse the processes put in place by the Company to protect not just its own interests but also the employeeôs interests. The ***Kirleis*** decision is a warning to all of us to pay attention to the details.

WHAT CAN YOUR MANAGERS DO RIGHT NOW?

Employers need to be on alert and need to examine these issues and their internal policies now, before you end up in Court and you find out then that your arbitration policy is not worth the paper it was printed on ï that is not the time you want to learn this. *CALL US NOW! WE CAN HELP!*

If you would like additional information on the topics detailed in this issue, or any prior issues, of Employment News Alert, or otherwise need assistance and advice on any employment matter, please call or email as follows:

Brian E. Curtis, Esq.
(732) 277-8261 becurtis@strykertams.com

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