Want an Arbitration Agreement? Give Notice

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Litigation, particularly jury trial litigation in the state and federal courts, is very expensive. Many employers successfully have adopted arbitration agreement policies to cut those costs. However, this year the Legislature made a significant change to when employees may enter arbitration agreements. Under the new law, which takes effect Jan. 1, arbitration agreements between employers and employees are only valid if the employee is informed of the need to enter an arbitration agreement at least two weeks before starting work and in connection with a written job offer - or upon a bona fide advancement if he or she is already employed. After the first of the year, an employer no longer will be able to simply decide it wants to have arbitration agreements and then go sign up all of its employees.

Q. If we are unable to enter into arbitration agreements with our new employees, is there anything we can do to try and limit the litigation expenses if one of them brings a lawsuit against us?

A. An arbitration agreement would be preferable, but you could enter into a jury trial waiver agreement with the new employees. The employees would still be able to use the court systems to bring claims against you, but they would have given up their right to a jury trial. Instead, the case would be heard by a judge. This can save significant expenses on cases that proceed all the way to trial. However, few cases actually make it to trial, and jury trial waivers are somewhat disfavored. Accordingly, you have to make sure you do them right or you could end up spending more money fighting about whether the waivers are enforceable than you would on a trial.

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