

Don't Wait For Court to Toss Arbitration Law

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In a previous issue, I discussed the new statutory provisions relating to arbitration provisions in employment agreements. Specifically, the new Oregon law requires employers to give potential employees at least 14 days' notice of the need to enter into an arbitration agreement in connection with an offer of employment in order to be able to later enforce that arbitration agreement. After that article was published, I received a few inquiries regarding the enforceability of the new statute itself. Doesn't the new Oregon statute impermissibly contradict the Federal Arbitration Act, which favors arbitration agreements, and is therefore unenforceable? Probably.

What does this mean to employers? It means some employer is likely going to appeal an Oregon court's decision not to enforce an arbitration agreement based upon the new statute. It also means that employer will likely win in the end. However, the fight will likely be long and expensive. Arbitration generally is quicker and cheaper than litigation. That benefit will be negated if the employer is forced to spend years in appellate courts just fighting for the right to eventually arbitrate the matter.

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Related People



Mitchell C. Baker

Partner

503 205 8000

000.200.0000
Email