



Will Your Arbitration Agreement Be Enforceable After September 30, 2013?

Insights

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Some employers have decided that it is beneficial to try to avoid public lawsuits and arbitrate disputes they may have with their employees. Such employers typically require employees to agree to arbitration at the time of employment by including such language in their employment applications or other documents that are signed by employees.

Employers may lose their right to arbitrate future disputes if they are not familiar with the provisions of a new Nevada law which provides that any arbitration agreement entered into or renewed on or after October 1, 2013 will be void and unenforceable unless the employee has specifically authorized and agreed to arbitration. Arbitration agreements in existence before October 1 are not subject to these requirements (unless they are renewed after that date).

The law also does not apply to agreements to arbitrate that are contained in a collective bargaining agreement. Remember too, that even if your arbitration agreement complies with the new law, its enforceability can still be attacked if the provisions are so unreasonable or unfair as to be an “unconscionable” contract.

What You Should Do

Those employers who already use arbitration agreements with their nonunion employees should make sure the language and format of the document which contains the agreement will comply with the new law with respect to persons hired on or after October 1, 2013. While employers do not have to change agreements that are already in effect, we recommend that arbitration agreements with employees be set forth in stand-alone documents that do not have any other subject. Just above the signature line, in bold capital letters of reasonable font size, your agreement should indicate that the employee has read the document, understands that it provides for arbitration, and authorizes and agrees to the arbitration of disputes arising out of his or her employment.

For those employers who continue to want to include their arbitration provisions in employment applications or other documents that address subjects other than arbitration (e.g., employment contracts and severance agreements), we recommend that there be a separate signature line below the language suggested above which specifically indicates that the employee has authorized and agreed to arbitration.

In light of this and other recent changes in Nevada and other law, this may be a good time for the overall review of the language of your employment applications and other hiring documents.

For more information contact any attorney in the Las Vegas office of Fisher Phillips at (702) 252-3131.

This Legal Alert provides an overview of a specific Nevada state law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.