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INARTFUL WORDING DOOMS EMPLOYER'S ARBITRATION AGREEMENT

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A New York judge recently rejected an employer's attempt to force an employment claim into arbitration due to a poor choice of wording in the written agreement. The August 7 decision might draw attention because of the identity of the employer—the Trump for President campaign organization—but it should be on your radar screen solely because it provides a lesson about the value of carefully drafted employment agreements.

ARBITRATION AGREEMENT INVOKED TO SIDESTEP COURTROOM LITIGATION

Jessica Denson went to work for the Trump for President campaign in August 2016 as a national phone bank administrator. She claims that the workplace environment was "horrible," as she says her supervisors subjected her to a hostile tirade, inappropriately tracked her whereabouts to try to "find dirt on her," and subjected her to cyberbullying and harassment. After the election was over, she filed suit in New York state court, alleging a variety of claims against the campaign.

In response, the campaign asked the court to transfer the case to mandatory arbitration as per the agreement signed by Denson upon hire. The relevant arbitration clause states:

Without limiting the Company's…right to commence a lawsuit in a court of competent jurisdiction in the State of New York, any dispute arising under or relating to this agreement may, at the sole discretion of [the employer], be submitted to binding arbitration in the State of New York

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pursuant to the rules for commercial arbitrations of the American Arbitration Association, and you hereby agree to and will not contest such submissions.

Denson—acting as her own counsel—resisted the request and asked the court to retain jurisdiction. On August 7, the judge ruled for Denson and rejected the request to move the case to arbitration.

COURT CONCLUDES AGREEMENT DOES NOT SAY WHAT EMPLOYER NOW WANTS IT TO SAY

Judge Arlene Bluth published a short and to-the-point six-page opinion (which was first made public through a tweet by Denson on August 16) criticizing the arbitration agreement for being drafted too narrowly. She noted that the arbitration clause confines arbitration only to "any dispute arising under or relating to this agreement." She observed that "it *does not* require arbitration for any 'dispute between the parties' or even 'any dispute arising out of plaintiff's employment.'" (emphasis in original)

She pointed to the fact that the agreement between the parties contained a specific list of five prohibited acts restricting Denson's activities. The agreement barred Denson from: disclosing confidential information, disparaging the campaign, providing services to a competitor, soliciting campaign employees to a competitor, and providing intellectual property to a competitor. Judge Bluth said that she read the agreement to permit the employer to decide whether to file a lawsuit or initiate arbitration against Denson if she were to violate any of these provisions, but no further.

The judge noted that the arbitration clause could have been written to require any disputes arising out of Denson's employment to go to arbitration, or to force any claims brought by Denson against the campaign into arbitration, but it did not. Instead, the judge said, "the clause is much narrower."

"There is simply no way to construe this arbitration clause in this agreement to prevent plaintiff from pursuing harassment claims in court," the judge bluntly concluded. For this reason, Judge Bluth denied the employer's motion to have this case sent to arbitration, and permitted it to proceed for standard pretrial activity.

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LESSON TO BE LEARNED

The lesson to learn from this case is simple but cannot be overstated: it is critical that you have labor and employment law counsel review and approve your arbitration agreements to ensure they are properly worded and in compliance with the law in your relevant jurisdictions. There have been significant victories for employers when it comes to the enforceability of arbitration agreements in the recent past, but these victories are for naught if you do not ensure that your employment agreements are properly drafted.

If you need assistance reviewing your arbitration agreements to ensure they meet the newest standards set by the Supreme Court and are in compliance with all relevant local laws, or crafting new agreements to capitalize on the latest decisions, please contact your Fisher Phillips attorney.

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

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