

Employers May Compel Arbitration Even Where Employee Failed to Sign Arbitration Agreement

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In yet another example of the strong federal policy favoring arbitration embodied in the Federal Arbitration Act (FAA), U.S. District Court Judge Joel Slomsky of the Eastern District of Pennsylvania granted employer FC Compassus LLC's motion to compel arbitration in a former employee's discrimination suit.

Suzanne Hoffman, a former employee at FC Compassus, claimed that she was fired after taking medical leave for post-traumatic stress disorder. She alleged that her anxiety disorders were aggravated after a series of acquisitions, which led to increased tensions and disagreements with management.

Ms. Hoffman disputed that she had entered into a valid arbitration agreement with FC Compassus. She argued that she had not read the company's dispute resolution policy and never signed or returned it, which proved that she never intended to agree to arbitrate her employment discrimination claims. Judge Slomsky disagreed. He grounded his decision to compel arbitration in the language of the policy, which put Ms. Hoffman on notice. While not initially mandatory, the policy stated:

If you do not opt out of this Policy within this 14-day period, both you and Compassus will be required to arbitrate all claims and disputes covered by this Policy in accordance with its terms.

After reviewing Pennsylvania contract law concerning "offer, acceptance and consideration" and applying the FAA's presumption favoring arbitration, the court concluded that although Ms. Hoffman did not sign the agreement on the signature page, her acceptance of its terms could be inferred from her failure to opt-out within 14 days outlined in the policy and by her continued employment at FC Compassus. The FAA does not require that an arbitration agreement be signed, only that it be in

writing.

Ms. Hoffman further alleged that the policy was unlawful because it restricted her right to an award of attorneys' fees if she were to prevail in arbitration. Again, turning to the policy language, Judge Slomsky noted that Ms. Hoffman was required to pay her own attorneys' fees, "subject to any remedies to which [employee] may later be entitled under applicable law." Therefore, if she were to win on her claims under the Age Discrimination in Employment Act, Americans with Disabilities Act, Family and Medical Leave Act, or Pennsylvania state law, she would be entitled to attorneys' fees and costs. Otherwise, Judge Slomsky found that any remaining ambiguity about the policy should be submitted to an arbitrator.

This case is a textbook example of arbitration agreement enforcement under the FAA. It also underscores the importance of providing a right to opt out of arbitration in employment and consumer arbitration agreements. In addition to acknowledging acceptance of the arbitration agreement if the employee or consumer does not opt out, an opt-out provision defeats a contention that the agreement is procedurally unconscionable because it is a contract of adhesion. Scores of courts have so held.

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