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New Jersey Supreme Court Eases Rules for Arbitration Agreements in the Digital Age

Many employers prefer to resolve disputes with their employees in arbitration rather than through the courts. However, companies that utilize arbitration agreements may face challenges by their current or former employees as to enforceability, including arguing that they never entered into the agreement. In a welcome decision for New Jersey employers, *Skuse v. Pfizer, Inc.*, the New Jersey Supreme Court held that continued employment may constitute sufficient consent to an agreement to arbitrate. The court also approved distribution of the arbitration agreement via electronic means.

The Earlier Court Ruling Restricting Arbitration Pacts

By way of background, Pfizer Inc. communicated its arbitration program to employees via e-mails that also contained a link to a copy of the arbitration agreement. A corresponding electronic "training module" also advised employees that they must "agree" to arbitration as a condition of employment. However, Pfizer only required employees to "click" a box indicating that they ***"acknowledge"*** the arbitration policy.

Amy Skuse filed a lawsuit against Pfizer, her former employer. After a New Jersey trial court held that Skuse was bound by Pfizer's arbitration agreement and dismissed her lawsuit, the Appellate Division reversed, criticizing Pfizer's e-mail distribution of the agreement and noting that the agreement only required employees to acknowledge rather than agree to arbitration. The Appellate Division also held that continued employment could not, on its own, bind an employee to an arbitration agreement. This Appellate Division decision created uncertainty for New Jersey employers that distributed arbitration agreements by electronic means. Further, this decision conflicted with authority in the appellate courts as to whether continued employment would suffice to bind employees to arbitration agreements.

The New Jersey Supreme Court's Decision

Fortunately for employers, the New Jersey Supreme Court agreed to review the case and reversed the Appellate Court's decision. The Supreme Court's holding included two key points for employers when implementing arbitration agreements with their employees.

First, the court held that continued employment can be enough to show consent to an arbitration agreement. In so holding, the court pointed out that Pfizer "unambiguously" explained that continued employment would be deemed to constitute assent to the agreement, even stating this fact in bold font and underscoring it with additional e-mail communications. That the training module only let employees click to acknowledge the agreement rather than agree to it was not an issue to the court. As a result, employers seeking to bind employees to future agreements by way of continued employment should make sure their own agreements are equally unambiguous.

Second, the court held that e-mail distribution of an arbitration agreement is a viable means of transmission. Although it noted that "many of our State's residents receive large volumes of e-mails … and that it is not always feasible for a given employee to scroll through and carefully read each of the e-mails," it nonetheless held that this did not insulate Skuse from complying with the agreement. The decision puts the onus on employees to obtain a copy of the arbitration agreement and ascertain the rights they would be waiving by assenting to it. As many New Jersey employers confront increasingly remote workforces, they can now rely on proper electronic communications to ensure the enforceability of their arbitration agreements.

Bottom Line

The court's decision lays out clear terms for employers that wish to distribute arbitration agreements electronically and make continued employment the method by which employees assent to such agreements. Both are welcome developments to employers seeking to bind employees to arbitration agreements in an increasingly electronic—and remote—workplace. Because employers must ensure that their agreements, explanations of the agreements to employees and methods of assent comply with New Jersey contract law (as well as other restrictions, including for claims arising under the New Jersey Law Against Discrimination), employers considering adopting or modifying arbitration agreements should consult with counsel before doing so.

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