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Employers should be aware of shifts in how arbitration agreements can be presented to employees

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Arbitration agreements, which aim to keep legal disputes between employees and employers out of the courts, are becoming more common. However, recent developments have led to significant shifts in how and where enforceable agreements may be presented to employees.

In *Coady v. Nationwide Motor Sales Corp.*, 32 F.4th 288 (4th Cir. 2022), the Fourth Circuit Court of Appeals ruled that the signature page of an employee handbook acknowledging its receipt by employees was part of an arbitration agreement and that the employer's retention of the right to change or modify policies in the handbook rendered the arbitration agreement "illusory, and thus invalid."

The case arose when four employees brought suit alleging their employer had engaged in fraudulent payment practices that reduced their commissions and pay. The employer moved to compel arbitration because the employees had signed for receipt of the handbook, which contained a section titled "Agreement to Submit All Employment Disputes to Arbitration."

The employees objected to arbitrating their claims, arguing that the arbitration agreement was an "illusory promise" and not enforceable because on the signature page the employer retained the right to amend or abolish the handbook without notice to the employees. The U.S. District Court for the District of Maryland agreed with the employees and deemed the arbitration agreement invalid.

On appeal, the Fourth Circuit analyzed the issue as a matter of contract interpretation. The appeals court found that the signed acknowledgment form was part of the arbitration agreement. The fifth paragraph of the agreement specifically referenced the acknowledgment of receipt as confirmation that the employees had read the arbitration agreement, and the receipt itself also referenced the arbitration agreement.

The Fourth Circuit then considered whether the modification clause of the acknowledgment must render the arbitration agreement invalid. The employer argued that the clause did not apply because it was located outside the "four corners" of the agreement. In its analysis, the court considered the wording of the acknowledgment "as a whole." Because the acknowledgment contained the modification language and stated that it applied to the handbook as a whole without exception, then the modification language must apply to the arbitration agreement, rendering the agreement illusory under Maryland contract law.

This case serves as a warning to employers because arbitration agreements are frequently printed in employee handbooks, many of which contain disclaimers. Employers stand a better chance of enforcing arbitration agreements if they are set out in stand-alone documents.

For more information on alternative dispute resolution procedures for employment law matters, please contact the Nexsen Pruet Employment and Labor Law team. Co-author:

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