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A Woolley Situation: District of New Jersey Refuses to Enforce Arbitration Clause in Employee Handbook

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New Jersey employers should consider the risks of including an arbitration agreement in a standard employment handbook in light of a recent decision by the United States District Court for the District of New Jersey. In *Raymours Furniture Co., Inc. v. Rossi*, No. 13-4440, 2014 U.S. Dist. LEXIS 1006 (D.N.J. Jan. 2, 2014), the Court refused to enforce an arbitration clause *because* it was part of an employment policy manual that contained a standard at-will employment disclaimer unequivocally stating the manual was not a contract *(i.e.*, a *Woolley* disclaimer).[1] The Court also found the clause unenforceable because the employer could unilaterally modify any provision of the handbook without notice to or consent of the employee.

Given the Court's decision, New Jersey employers would be better served by circulating self-contained arbitration agreements that are separate and apart from their employment handbooks and that allow for a "mutuality of obligation" between the employer and employee.

Background

Sandra Rossi was a New Jersey employee of Raymour & Flanigan. She signed a receipt and acknowledgment for Raymour's policy manual, which contained the following standard disclaimer, in relevant part:

THIS HANDBOOK IS NOT A CONTRACT OF EMPLOYMENT. All associates of the Company are employed on an 'at-will' basis . . . . Nothing in this Handbook, or any other Company practice or communication or document . . . creates a promise of continued employment, employment contract, term or obligation of any kind on the part of the Company.

By executing the receipt and acknowledgment, Rossi promised to familiarize herself with the handbook and all future changes. She also agreed that her continued employment signified her consent to all future changes.

Raymour later amended the policy manual to include an arbitration clause. Raymour notified its employees of this change and Rossi subsequently acknowledged receipt of the amended manual.

In June 2013, Rossi claimed that Raymour discriminated and retaliated against her in violation of the New Jersey Law Against Discrimination.[2] After settlement talks stalled, Raymour filed a demand for arbitration and moved in the District of New Jersey to compel Rossi to arbitrate the underlying dispute pursuant to the arbitration provision in the employee handbook. Rossi opposed the motion and cross-moved to dismiss on the grounds that, *inter alia*, there was no enforceable agreement to arbitrate between the parties.

Holding

The District of New Jersey held that Raymour's expansive *Woolley* disclaimer prevented the enforcement of the arbitration agreement found in the policy manual. Since thedisclaimer expressly disavowed the creation of a binding contract *without exception*, the Court found that the agreement to arbitrate was not "clear and unambiguous," as required by the New Jersey Supreme Court in *Leodori v. CIGNA Corp.*, 175 N.J. 293 (2003).[3] The Court also found the arbitration provision lacked mutuality of obligation given Raymour's ability to modify the handbook without notice to or consent of its employees.

Takeaway

As a matter of best practice, New Jersey employers who seek to have enforceable arbitration agreements should consider creating and distributing self-contained agreements that employees receive and acknowledge separately from any policy manual or handbook. New Jersey employers also should ensure that their employees receive notice of any change to an arbitration provision and a reasonable opportunity to accept or decline the policy by continuing to work or resigning. If you have any questions or concerns regarding this decision or how to craft an arbitration agreement, please contact your Proskauer lawyer.

[1] "Woolley" refers to *Woolley v. Hoffman-La Roche, Inc.*, 99 N.J. 284, *modified*, 101 N.J. 10 (1985) which stands for the general proposition that employee handbooks may create an enforceable employment contract without a sufficient disclaimer.

[2] Interestingly, the Court found that it had federal question subject matter jurisdiction to decide this case in the absence of a formal claim under federal law and despite Rossi's express disavowal of any federal claim. The Court reasoned that, because Rossi possibly could state a non-frivolous claim under the Americans with Disabilities Act, it had jurisdiction.

[3] *Leodori* primarily concerned the employee's assent to an arbitration clause in a handbook. In that case, the Court found the arbitration provision unenforceable because the employee did not explicitly indicate his intent to be bound by the arbitration provision.

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