

DeCotiis, FitzPatrick, Cole & Wisler, LLP

Employment Arbitration Clause Upheld

In a recent decision, Williams v. Washington Mutual Bank, United States District Court Judge Greenaway granted Defendant's motion to compel arbitration and dismissed the matter. This decision reinforces employers' arbitration clauses and also serves as a reminder to have employment agreements reviewed by counsel prior to distributing same.

In consideration of being hired, Plaintiff signed an employment arbitration agreement. When she was subsequently terminated, she protested her termination, and claimed that she was fired in retaliation in violation of New Jersey's whistleblower law, the Conscientious Employee Protection Act (CEPA).

Plaintiff filed suit in New Jersey Superior Court and Defendant removed the matter to United States District Court. The Defendant demonstrated that the Plaintiff had signed an agreement which was in consideration for employment. The Plaintiff argued the agreement to arbitrate was unenforceable since she had not read same. Relying upon Third Circuit cases, the District Court inquired: Did the parties seeking or resisting arbitration enter into a valid arbitration agreement? Did the dispute between those parties fall within the language of the arbitration agreement? In New Jersey, courts have generally upheld employment contracts if there is "sufficient consideration" to find the agreement is enforceable.

The wrinkle in this case was whether a plaintiff could waive her statutory right to sue for CEPA violations. The District Court found that the contractual agreement to arbitrate, even the CEPA allegation, was, in fact, enforceable because Plaintiff had signed a contract in which she agreed to arbitrate "any and all disputes" relating to her employment. Plaintiff had not established any fraud, duress or unconscionable act. Her claim that she was "unaware" of the arbitration clause was not sufficient for the Court to invalidate the contract.

When drafting employment contracts, it is important to ensure that the language is not overly broad and to also ensure there is fair consideration for any rights deemed waived by the agreement. It is also important to ensure the agreement complies with both the Federal Arbitration Act as well as governing

federal and state laws.

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