Davis Wright Tremaine LLP

Good News For Employers: New Law Makes Securing Employment Arbitration Agreements Easier

07.05.11

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The Oregon Legislature gave some relief to employers who wish to implement arbitration agreements with their employees in a new law. Previously, for an arbitration agreement between employers and employees to be valid[1], it had to, among other things, be included in a written offer of employment and received by an employee at least two weeks prior to the employee's first day of work. House Bill 3450 reduces this notice requirement to 72 hours and also requires certain language to be used for the agreement to be valid.

Specifically, in order for an arbitration agreement between an employer and employee to be valid, the following must occur:

- At least 72 hours before the first day of the employee's employment, the employee must receive notice in a written employment offer that an arbitration agreement is required as a condition of employment;

- The required arbitration agreement must contain, with a separate signature line, the following language in boldfaced type:

"I acknowledge that I have received and read or have had the opportunity to read this arbitration agreement. I understand that this arbitration agreement requires that disputes that involve the matters subject to the agreement be submitted to mediation or arbitration pursuant to the arbitration agreement rather than to a judge and jury in court."

The employee must sign the arbitration agreement, and separately sign the acknowledgment language set forth above. Changes to the law are not effective quite yet and only will apply to arbitration agreements entered into on or after Jan.1, 2012.

As before, an arbitration agreement may also be entered into upon subsequent bona fide advancement of the employee. The law does not require the acknowledgment language for arbitration agreements entered into in these circumstances, but there is no reason not to include similar acknowledgment language.

Bottom line

Check your arbitration agreements. They must be in writing, provided to an employee in advance of employment, and contain the acknowledgment language set forth above in boldfaced type. Questions? Contact your DWT Employment Attorney.

FOOTNOTE

1 In 2010, an Oregon district court judge held that the special provisions regarding employer/employee arbitration agreements then in effect were pre-empted by the Federal Arbitration Act. *Bettencourt v. Brookdale Senior Living Communities, Inc.*, 2010 WL 274331 (D. Or. 2010). This ruling, which could arguably extend to the changes embodied in HB 3450, would not invalidate agreements that contain the acknowledgment language. However, agreements without the language could still be enforceable.

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