

## Missouri Appeals Court Invalidates Arbitration Agreement Placed In Employee Handbook

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This week, the Missouri Court of Appeals in *Johnson v. Vatterott Educational Center, Inc., et al.*, invalidated an arbitration agreement between an employer and employee that was placed within the company's "Employee Handbook."

Vatterott Educational Centers ("Vatterott") hired Johnson in June of 2009. On March 15, 2010, Vatterott gave her an Employee Handbook, which contained a section titled "At Will Employment and Binding Arbitration Agreement." Johnson and a representative of Vatterott signed the Arbitration Agreement, which was then removed from the Employee Handbook and placed in Johnson's personnel file.

After Johnson was terminated in March of 2011, she brought claims against Vatterott for racial discrimination, harassment, and retaliation. Vatterott moved to stay the court proceeding and compel arbitration; however the trial court denied Vatterott's motion, and Vatterott appealed.

The Court of Appeals focused on the ambiguity created between the language in the Employee Handbook and the contractual language of the Arbitration Agreement. The Employee Handbook contained language (both before and after the Arbitration Agreement) stating that nothing in the Employee Handbook was contractual or enforceable, and that the Employee Handbook merely provided guidelines which may be unilaterally modified by Vatterott. In contrast, the Arbitration Agreement, which was clearly contained within the contents of the broader Employee Handbook, stated that it was a contract and that the arbitration provision was binding on the parties.

The Court of Appeals prefaced its holding by stating that an arbitration agreement within a handbook may constitute an enforceable agreement where the employer and employee unambiguously agree to binding arbitration. However, because Vatterott's arbitration agreement was "bookended by sections of the Employee Handbook which state in equally clear and explicit terms that nothing in the Handbook is contractual," there was an ambiguity which made the Arbitration Agreement subject to the general provisions of the Employee Handbook. As a result, the employee could pursue her claims in court and was not compelled to arbitrate.

**Employer Guidance** – This decision is a good example of how strictly some courts scrutinize arbitration agreements, even when the agreement itself complies with contract principles and would likely be valid as a stand-alone document. This case will likely be applied broader such that if there is any ambiguity between an arbitration agreement and a handbook, the court will err on the side of invalidating the arbitration agreement. The safest way to avoid the *Vatterott* situation is to form all arbitration agreements as separate contracts and avoid any ambiguity or contradictory language within the employee handbook.