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Sixth Circuit Establishes New Guidelines For Employment Claim Waivers

By Vincent T. Norwillo, Esq.

When new employees start at a company, many employers require them to waive their right to bring employment-related claims in court in favor of an in-house dispute resolution system. This system is intended to resolve employment disputes quicker and more efficiently, controlling litigation costs as well as the negative effects that protracted litigation can have upon your workforce. However, as the Sixth Circuit recently ruled, the entire system depends upon the validity of your written waivers. In Alonso v. Huron Valley Ambulance, Inc., Case No. 09-1812 (April 26, 2010), the Court instructed that a valid waiver must provide the employee with sufficiently detailed information about the alternative process being proposed at the time the waiver is signed. Otherwise, the waiver will not be considered "knowing and intelligent" and will not be enforced.

In Alonso, Huron Valley Ambulance (employer) required new hires to sign an agreement to bring all future employment claims before an internal grievance board and waive the right to sue in court. The agreement also required grievances to be filed within six months of the challenged employment decision or action, waiving any longer statutes of limitation. The Sixth Circuit confirmed that employers could impose such an internal dispute resolution procedure as a condition of employment - provided the waiver met specific criteria.

When plaintiffs Alan and Kimberly Alonso applied for work with the employer, the last page of their employment application had a section containing, among other things, a notice of the employer's internal grievance procedure and the six-month claim limitation. However, the application did not specifically describe

the procedure. Indeed, it was not until a month into their employment that the Alonsos received a copy of an employee handbook that provided an outline of the grievance process and directed employees to a website that provided more detail.

The Alonsos were eventually terminated and filed suit in federal court. The employer moved to dismiss the suit as barred by the waiver and the District Court agreed. On appeal, the Sixth Circuit reversed, holding that the Alonsos' waivers were not "knowing and intelligent" because the employer failed to provide sufficient information about the internal grievance procedure. This lack of information voided the waiver in its entirety, including the six-month statute of limitations. The Court noted that a valid waiver must provide the employee with specific information about the grievance procedure at the time the waiver is signed. The Court also suggested, in referencing other decisions, that this "specific information" should include an identification of the decision maker (outside mediator or arbitrator), as well as an explanation of the applicable rules of procedure and a breakdown of all steps in the process.

The Court found the employer violated both requirements for a valid waiver: not only was the information in the policy manual provided too late, it was also inadequate. Even if the manual was presented with the waiver, Plaintiffs would still have had to access a website to secure an explanation of the procedure they were agreeing to adopt. The Court implied that these deficiencies could have been cured had Plaintiffs been given an opportunity to revoke their waiver after accessing this information - but the employer did not do so.

Employers within the Sixth Circuit (Ohio, Kentucky, Tennessee and Michigan) should note that while they may continue to ask employees to waive the right to bring employment lawsuits in court and even shorten the time that these claims may be brought before an alternate forum, the waiver must be drafted and presented properly. At a minimum, at the time the employee is asked to sign the waiver, they should be provided with information describing who oversees the process, the rules of that process, how the process is initiated (how a claim is filed, to whom, etc.) and an explanation of what happens during each step of the process and what, if anything, the employee has to do to take their complaint to the successive stages of the dispute resolution procedure.

To be clear, the Alonso decision does not guarantee that providing this information would render waivers enforceable in all circumstances. At a minimum, employers can be certain that an agreement to waive future employment claims in court will not be upheld unless the employer provides contemporaneous, detailed information about the type of alternate dispute resolution procedure to be adopted.

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