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General Acknowledgment of Receipt of Employer's Policies Sufficient to Compel Employee to Arbitrate

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In recent years, the courts and state legislatures across the country have been interpreting and enforcing laws regarding arbitration more strictly. What this means is that a lot of existing arbitration agreements no longer pass muster and must be revised in order to be compliant with the ever-changing laws. In this particular case, the employee's agreement to arbitrate employment disputes stood up, and it was because the employer had the right language in its policy documents. Read on.

In *Ashbey v. Archstone Property Management,* No. 12-55912 (9th Cir. May 12, 2015), the employee, in this case, signed a general acknowledgment of receipt. You know the document — pretty standard agreement stating that the employee has received, reviewed, and understands the policies. This particular acknowledgment took it a step further by requiring the employee to acknowledge receipt of the handbook and the policies contained therein, one of which was a dispute resolution policy regarding arbitration.

Despite the foregoing, the employee later filed suit in state court claiming unlawful retaliation in violation of Title VII of the Civil Rights Act of 1964 (as amended) and equivalent state law claims. As you might expect, the employer removed the case to federal court and then sought to compel arbitration based on the fact that the employee had executed the acknowledgment agreeing to comply with the dispute resolution policy. The district court issued an order denying the employer's motion to compel arbitration because it found the policy failed to give the employee adequate notice to knowingly waive a jury trial, and the employer appealed.

The Ninth Circuit Court of Appeals, however, reversed. The Ninth Circuit agreed that the employer had sufficiently advised the employee of the dispute resolution policy and the fact that the employee would be giving up his right to a trial by jury when he executed the acknowledgment. Quite simply, the employer's policy expressly stated that the company had a dispute resolution policy which contained an arbitration provision, and the employee expressly agreed to adhere to that policy. Further, the court of appeals found that the acknowledgment executed by the employee was sufficient to put the employee on notice that he was agreeing to adhere to the dispute resolution policy. Even though the acknowledgment did not specifically spell out the terms of the arbitration

policy, that alone did not render it invalid. As the court pointed out, the employee could easily access the policies and acknowledged that he could.

This case serves as a good reminder for employers to review their arbitration policies as well as the acknowledgments of receipt. See whether the acknowledgment expressly identifies the arbitration policy. Based on the court's decision here, it may be prudent to consider adding such language to any acknowledgments to further put the employee on notice of the policy.

If you have questions about your own arbitration policies, please contact Amy K. Jensen, a partner in Hinshaw's San Francisco and Los Angeles offices.

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