

Missouri Supreme Court: Arbitration Agreements Signed At Hiring Are Supported By Consideration

Labor & Employment Law Update

on February 6, 2019

The enforceability of arbitration agreements with employees in Missouri has been an area of uncertainty for some time. However, the Missouri Supreme Court recently offered some clarity in a decision sure to be cheered by employers seeking to keep employee disputes out of court.

In *Easter Seals Midwest v. Soars*, the court was asked to weigh in on the enforceability of an arbitration agreement an employee signed as a necessary condition of *initial* employment with his employer. The agreement in question was a standalone agreement, offered at the time the employee was hired, and included what is called a “delegation clause,” which gave the arbitrator (not the courts) the exclusive authority to resolve disputes relating to the agreement’s interpretation, applicability and enforcement.

When the employee was terminated for refusing to participate in an employee investigation into alleged abuse and neglect of clients, he filed suit in state court against the employer for wrongful discharge and race discrimination. The employer moved to enforce the agreement and compel arbitration of the employee’s claims, which the employee opposed arguing that the agreement lacked consideration, among other things.

The lower court denied the motion to compel, but the supreme court reversed. In doing so, the court approved of the agreement, including its delegation clause, noting that arbitration agreements are to be considered separate and apart from any underlying or contemporaneous agreements.

Of particular note, the court distinguished its prior holding in *Baker v. Bristol Care*, in which it held that *continued* at-will employment is not adequate consideration to form an enforceable arbitration agreement. According to the court, there is a “paramount” difference between considering whether consideration exists in an offer of continued at-will employment and an offer of *initial* at-will employment.

This is an important development from the court that clears up employers' uncertainty as to the enforceability of arbitration agreements executed at the time of hire. Whether this is a harbinger of change with respect to enforcement of arbitration agreements entered into in consideration of *continued* at-will employment is an issue to be monitored. However, based on the court's discussion of *Bristol*, such change seems unlikely any time soon.

Also of note: in embracing the agreement's delegation clause, the court gave its stamp of approval for arbitrators to resolve disputes over the enforceability and interpretation of arbitration agreements. Assuming arbitrators have read the court's holding in *Soars*, employers can have increased confidence that their arbitration agreements with employees will be enforced and withstand scrutiny.

In light of *Soars*, employers in Missouri would be well served to review the arbitration agreements they offer at the time of hire, specifically to ensure that a valid delegation clause is included.

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