

U.S. District Court Looks at Change of Employment Terms Sent by Email

Labor & Employment Law Update

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The U.S. District Court in Connecticut recently issued an instructive decision on the ever-increasing practice of emailing employees to notify them of changes to the terms of their employment. Financial services giant Morgan Stanley sent employees an email detailing its new mandatory Convenient Access to Resolutions for Employees (CARE) arbitration program. It reflected an effort by Morgan Stanley to expand mandatory arbitration to all employee disputes including previously exempted statutory discrimination claims. After one employee filed a federal lawsuit for age discrimination, Morgan Stanley moved to compel arbitration.

The employee fought back. What was her defense? Well, the employee simply denied that she read her email. She argued that she couldn't have accepted contract terms she hadn't even read.

However, the court disagreed and noted that as an at-will employee her employment and its conditions are subject to change. The court found that the former employee had sufficient notice of the change and that her failure to read her email didn't provide a valid excuse. The court also found it significant that Morgan Stanley provided additional opportunity to review the change by posting it on the company's intranet. These days, it is "established business practice and expectation for employees both to routinely check email and internal business sites for important updates concerning the business, their employment, or changes in operations or procedures," the court observed.

Notably, the email stated that employees had a month to opt-out by completing a CARE Arbitration Program Opt-Out Form. By giving an opt-out choice, Morgan Stanley avoided "the condemned practice of 'unilaterally thrusting' these changes" on their employees.

In the end, the court found that Morgan Stanley's CARE program represented a binding and enforceable change to its employee arbitration policy. The case of *Antollino v. Morgan Stanley*, Case No. 17-cv-1777 (D. Conn. May 11, 2018) is currently under consideration by the U.S. Court of Appeals for the Second Circuit.

Tips for Employers:

- Conspicuously label employment changes sent by email
- Post the changes somewhere else too making them accessible to all employees
- Consider opt-out options
- Be sure to create a standardized process for notifying employees of changes

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