



Bad Facts Make Bad Law for Employers/Alternative Resolution

Melissa J. Jackson

Foster Swift Employment, Labor & Benefits Quarterly
Summer 2010

On April 26, 2010, our Sixth Circuit issued a decision in the case of *Alonso v Huron Valley Ambulance, Incorporated*. The only good news about this opinion for employers is that it was not recommended for publication. So, although it can be used in arguments to courts, the courts are not bound by the decision.

In this case, the Court reviewed an alternative dispute resolution process that was used by Huron Valley Ambulance. The process allowed employees to appeal employment-related claims through a four-step grievance system. The claims had to be brought within six months of the incident precipitating the claim, and the final step was a hearing before an internal Grievance Review Board. All employment-related appeals were required to be brought through this internal process. The plaintiffs in this case, however, went to court instead and claimed that the internal appeals process was not final and binding on them because the process was not fair. The Court agreed, finding that they did not "knowingly and intelligently" waive their right to sue in court or agree to a six month limitation period on their claims.

The plaintiffs in this case had signed a job application in which they agreed to be bound by the internal process and the six month limitations period. The Court stated, however, that "[a]t the time the Alonsos signed waivers of their rights to a judicial forum, they had no idea what the Grievance Review Board process entailed." The Court objected to the fact that the plaintiffs were not given any documentation regarding the process until almost a month after they began their employment, which is when they received the employee handbook that described the process. Also, when they applied and signed the application form, they were in a small room with a number of other applicants, told that this was their only opportunity to apply and there was no one present to answer questions. The Court summarily dismissed the defendant's argument that the claim was not brought within the six month limitations period, holding that, since the waiver of the right to sue was not knowing, the agreement to the six month limitations period was likewise flawed.

AUTHORS/ CONTRIBUTORS

Melissa J. Jackson

PRACTICE AREAS

Alternative Dispute Resolution

Employment Law



Although plaintiffs' attorneys are hailing this decision as a harbinger of things to come, this is the first time that a court has struck down a waiver and, as we noted, this Court did so in an unpublished decision. The decision also disregards a strong trend of courts to favor arbitration and quick resolution. So, we are not advising employers to abandon their alternative resolution processes and the shortened limitation periods. Nevertheless, the decision does signal that certain steps should be taken to react to the Court's concerns. First, provide a pamphlet to applicants, along with the application form, explaining the alternative dispute resolution system; this can be a copy of the policy in the handbook. Second, add a statement to the waiver indicating that the applicant can request additional information regarding the process and speak to Human Resources if he or she has questions about it. Third, allow the applicant to pause the application process to provide time for consideration of the waiver and then, when and if the applicant agrees to be bound by it, resume the process at the point that it was paused.

Fourth, add a statement to the waiver in which the applicant acknowledges that he or she is waiving certain legal rights and understands that waiver. Finally, ensure that the alternative dispute resolution system itself is fair. In this case, the Court found that the process was weighted in favor of the employer since the final step of the appeal was heard by a Board consisting of two managers chosen by management and three employees chosen by the appealing employee, one of whom had to be a manager; thus, the majority of the Board was comprised of managers.

Wary employers should take steps to minimize the impact of this decision. Please contact your employment attorney if you would like us to review your current documents.