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Arbitration Clause In Employee Handbook Held Unenforceable Because Employee Did Not Sign Separate Arbitration Agreement

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In a December 12, 2007 decision, *Mitri v. Arnel Management Company*, the California Court of Appeal held that an employer could not rely on language in its employee handbook to compel arbitration, because the employer could not prove that it had signed a separate arbitration agreement with the employee. The employer's handbook contained a provision stating, "Any dispute arising out of employment with the Company, as allowed by law, will be settled by binding arbitration. As a condition of employment, all employees are required to sign an arbitration agreement." The handbook also contained details concerning the procedures that would apply to the arbitration. The employee signed an acknowledgement form, agreeing that she had "read and understood" the handbook, but she did not sign a separate arbitration agreement.

The employee sued the employer for sexual harassment, discrimination, retaliation, invasion of privacy, and defamation. The trial court refused the employer's request to compel arbitration, holding that the employee handbook was insufficient to establish an arbitration agreement. The appellate court agreed with the trial court's conclusion. It pointed to the provision of the handbook requiring employees "to sign an arbitration agreement," and found that this language "completely undermines any argument by defendants [that] the provision in the handbook itself was intended to constitute an arbitration agreement." Instead, the appellate court determined that "the employee handbook's arbitration provision only placed plaintiffs on notice that they would be called upon to sign a separate binding agreement."

The employer might not have avoided this problem by omitting reference to a separate arbitration agreement in its handbook. The trial court ruled that an employee handbook is not a suitable vehicle for an arbitration agreement, "because the policies in the handbook, including the arbitration provision, can be changed or revised without notice whenever the company determines it is warranted," and because "[t]he employee does not have reciprocal rights to amend the handbook." The appellate court did not address this conclusion, given its determination that the handbook was not intended to constitute an arbitration agreement.

In light of the *Mitri* decision, employers wishing to arbitrate disputes with employees should enter into separate, signed arbitration agreements. California case law has imposed a variety of requirements for such agreements. Among other things, arbitration agreements with employees must be mutual, must include the right to conduct discovery, must not limit the remedies available to employees, and must provide that the employer will pay the arbitrator's fees.