

# Appellate Court Invalidates Arbitration Agreement Presented to Employees Through Interoffice Mail

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November 2007

In a recent decision, *Murphy v. Check 'N Go of California, Inc.*, the California Court of Appeal refused to enforce an agreement calling for arbitration of employment disputes because of the manner in which the employer presented the agreement to its employees. The appellate court found that the agreement was "unconscionable," because employees reasonably believed that they had to sign the agreement in order to keep their jobs.

In *Murphy*, the plaintiff filed a class action lawsuit against her former employer, claiming that the employer had failed to pay overtime wages to her and to others with similar job descriptions. During the time of her employment, the plaintiff had signed an agreement providing that any and all disputes regarding her employment would be resolved through arbitration, rather than in court. Accordingly, the employer asked the court to compel arbitration of the dispute. The trial court refused the employer's request, and the employer appealed.

The Court of Appeal affirmed the trial court's ruling. It found that the agreement was unconscionable, even though the employer had taken steps to ensure that the agreement was fair and reasonable. In keeping with past precedent, the agreement applied equally to claims brought by either party. The agreement came with a cover page, advising employees to "carefully review the entire agreement and, if you want, consult with an independent attorney." The employer did not tell employees that they were required to sign the agreement.

Despite these facts, the plaintiff argued that the employer had presented the agreement to her unfairly, because she received it through interoffice mail, and because "no one explained the agreement to her, or told her that she had the option to revise or opt out of the agreement." From these facts, the appellate court inferred that the employee "reasonably expected that she was required to sign the contract as a condition of continued employment." The appellate court concluded that the plaintiff's "alleged assent" to the agreement "was vitiated by the fact that it was set forth in a contract of adhesion, i.e., a standardized contract drafted by the stronger party and presented to the weaker party on a take it or leave it basis." Turning to the substance of the agreement, the appellate court found that a provision preventing class actions unfairly deterred employees from bringing claims for unpaid overtime wages.

The *Murphy* decision shows that the way employers present arbitration agreements to employees can be just as important as what the agreements say. Arbitration agreements are more likely to be enforced if an employer conducts meetings with employees to discuss the agreements or, at a minimum, makes clear in a cover memorandum that the employee is free to accept or reject the agreement, without losing her job.