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Circuit City Stores, Inc. v. Adams

On March 21, 2001, the U.S. Supreme Court removed another barrier to the enforcement of pre-dispute arbitration agreements in the employment context. The Court ruled in *Circuit City Stores, Inc. v. Adams*[1] that the Federal Arbitration Act ("FAA" or the "Act"), which embodies the federal policy in favor of arbitration, applies to employment contracts. [2]

In its ruling, the Court reversed the decision of the Court of Appeals for the Ninth Circuit, which alone among all of the Circuit courts to have considered the question, held that § 1 of the FAA exempted employment agreements from coverage by the FAA. The Court also confirmed that its earlier decision, *Southland Corporation v. Keating* [3], which held that the FAA preempts any state law that prohibits or limits the enforcement of arbitration clauses, applies to employment contracts. Therefore, under *Adams*, state laws that purport to prohibit the application of arbitration clauses to statutory employment claims such as discrimination and harassment are also preempted by the FAA.

The *Adams* decision should come as good news for employers who have been trying to avoid the escalating damages, negative publicity and inevitable disruptions which accompany litigation by implementing alternate dispute resolution ("ADR") policies and procedures and by requiring employees to agree to compulsory, binding arbitration of employment disputes as a condition of employment. The arbitration agreement at issue in *Adams* – which was contained in an employment application – was typical of such agreements, and provided that all claims or disputes arising out of the employee's employment or the cessation of his employment with Circuit City would be settled exclusively by final and binding arbitration.

Mandatory ADR and compulsory arbitration agreements have recently been subject to intense scrutiny, especially to the extent that they appear to require employees to waive rights to court procedures and trials under state and federal anti-discrimination laws. In 1997, the U.S. Equal Employment Opportunity Commission ("EEOC"), the federal agency charged with enforcing anti-discrimination laws such as Title VII of the Civil Rights Act of 1964 ("Title VII"), the Age Discrimination in Employment Act ("ADEA"), and the Americans With Disabilities Act ("ADA"), adopted the position that pre-dispute compulsory arbitration agreements violate Title VII [4] . This has also been the

position taken by the Massachusetts Commission Against Discrimination ("MCAD") regarding the compulsory arbitration of claims under M.G.L. c.151B, the Massachusetts Fair Employment Practices Act. During the past few years, the EEOC has mounted an organized campaign against arbitration of Title VII claims by issuing charges against employers who have adopted policies requiring binding arbitration of civil rights claims as a condition of employment.

In contrast, the Court of Appeals for the First Circuit, along with many other circuit courts of appeal, has held that nothing in Title VII, the ADEA or the ADA precludes the enforcement of pre-dispute mandatory ADR agreements. [5] *Adams* does not resolve the dispute between the EEOC and the circuit courts on this issue, but *in dicta*, refers to its previously stated opinion that arbitration agreements may be enforced under the FAA without contravening the protections of federal laws against discrimination. [6] The court's decision implies that it would support the position taken by the majority of circuits, and that mandatory arbitration of discrimination claims is permissible under Title VII and the other federal anti-discrimination laws. [7]

Taken together, *Adams* and *Southland Corporation* hold that states may not prohibit enforcement of employment-related arbitration agreements on the grounds of public policy. It remains unclear to what degree Massachusetts and other states will be able to restrict mandatory arbitration of statutory employment claims by prohibiting enforcement of agreements where statutory remedies are limited or where costs are imposed on the employee, or by requiring such agreements to permit discovery and to contain procedural safeguards such as those afforded by the courts. Now, as in the past, employers must craft the language of arbitration provisions with care. Where an agreement is ambiguous or fails to provide notice to employees that all employment-related claims, including statutory claims, are subject to mandatory arbitration, it may not be enforceable.

The FAA compels judicial enforcement of all written arbitration agreements "save upon such grounds as exist at law or in equity for the revocation of any contract." [8] An arbitration agreement may be rendered unenforceable if it is found to be unconscionable, to result from fraud or from *overwhelming* economic power that would provide grounds for the revocation of any contract. [9] Therefore, litigation over the enforcement of arbitration agreements under the FAA will focus on the fairness of the agreements as well as the forum's ability to provide employees with the substantive rights afforded by state and federal anti-discrimination laws.

Although the EEOC and the MCAD may continue to view compulsory arbitration of discrimination claims as impermissible under federal and state anti-discrimination laws, *Adams* clearly illustrates the Court's continuing commitment to arbitration as an alternative to litigation in the employment context. Employers who do not already have them in place should consider requiring pre-dispute arbitration agreements as a condition of employment, while employers with such agreements should have them reviewed to ensure they will survive any challenge to their substance and fairness.

For more information, contact Hale and Dorr's Labor and Employment Department.

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1. 532 U.S. _ (2001)
2. Excluded from the Act's coverage are seaman, railroad employees or transportation workers.
3. 465 U.S. 1 (1984)
4. EEOC Notice No. 915.002 (July 10, 1997) (Policy Statement on Mandatory Binding Arbitration of Employment Discrimination Disputes as a Condition of Employment).
5. *Rosenberg v. Merrill Lynch, Pierce, Fenner and Smith, Inc.,* 170 F.3d 1 (1st Cir. 1998) ("ADA").
6. *Gilmer v. Interstate/Johnson Lane Corp.,* 500 U.S. 20, 26 (1991)
7. Shortly after issuing this decision in *Adams*, the court agreed to review the decision by the Fourth Circuit Court of Appeals in EEOC Waffle House, Inc., 193 F.3d 805 (1999), holding that the EEOC was barred from pursuing an action for monetary relief in court on behalf of an employee where the employee had signed an agreement to arbitrate. The outcome of this case may shed more light on the Court's position regarding the mandatory arbitration of discrimination claims.
8. 9 U.S.C. § 2
9. *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc* ., 473 U.S. 614, 627 (1985)

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