FENWICK & WEST LLP

Weekly Employment Brief

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Daniel McCoy, Contributor, 650.335.7897
Allen Kato, Co-Editor, 415.875.2464
Tom Moyer, Co-Editor

Valid Non-Competition Agreements From Other States Are Not Enforceable In California

A recent California Court of Appeal decision is great news for both employees who come to California from other states, and the employers attempting to recruit them. In *Advanced Bionics Corp. v. Medtronic, Inc.*, a Minnesota-based company attempted to enforce an agreement with a former employee which prohibited the employee from providing services to a competitor for two years after termination of his employment. When the employee quit, left Minnesota and joined Advanced Bionics Corp. (a competitor) in California, Medtronic attempted to enforce the non-competition agreement. In refusing to do so, and thereby permitting the employee to join Medtronic's competitor in California, the Court of Appeal found that California's interest in facilitating the free movement of labor outweighed Minnesota's interest in enforcing a contract which is otherwise valid in that state. Significantly, in concluding that California law should be applied, the court relied on the fact that the employee and the California employer sued first in a California Superior Court for a declaration that the agreement was invalid, after which the Minnesota employer filed suit in a Minnesota court to enforce the agreement. Thus, employers faced with Advanced Bionics' dilemma should strongly consider "running to the courthouse first," before an out of state employer seeks relief in another state which may be more willing to enforce a non-competition agreement.

Signature On Acknowledgement Page Of Employee Handbook Not Sufficient To Bind Employee To Agreement To Arbitrate Therein

A California Court of Appeal rejected an employer's attempt to bind a terminated employee to arbitration, where the employee handbook and attached acknowledgement form on which the employer relied were seriously flawed. In *Romo v. Y-3 Holdings Inc.*, a former employee of Y-3 Holdings attempted to sue the company in a trial court for wrongful termination and other claims arising out of her employment. Y-3 Holdings directed the court to its employee handbook, which included an arbitration agreement. The company further directed the court to the handbook acknowledgement form, signed by the employee, which reflected her agreement to be bound by the benefits, policies, rules and procedures set forth in the handbook. However, the acknowledgement made no reference to the arbitration agreement attached as part of the handbook. Further, the agreement was intended to be a free-standing agreement, with lines on which the company and the employee were to sign acknowledging their agreement to arbitrate. However, the agreement somehow made its way into the handbook, and neither party signed the actual agreement. The court concluded that, for the arbitration agreement to be effective, both parties needed to assent to the particular provision in the handbook. The parties did not provide that assent, nor did the employee's acknowledgement of having received and read the handbook cover an agreement to arbitrate. This case emphasizes the importance of clear and effective language in acknowledgement forms attached to employee

handbooks. Notwithstanding the fact that the arbitration agreement was intended as a free-standing document, had the acknowledgement form made an express reference to the arbitration provisions, the company may have been able to enforce this method of alternative dispute resolution against the employee. However, it is clear from this case that the best practice, in many if not most situations, is to enter into free-standing arbitration agreements, signed by both employee and employer.

Former Employee's Workers Compensation Release Of Claims Held Applicable To Civil Claims For Gender Discrimination

In *Jefferson v. California Department of Youth Authority*, an employer successfully relied on a former employee's release executed in connection with a workers compensation claim, to defeat her civil claims against the employer for gender discrimination. The plaintiff alleged that, while employed as a teacher's assistant for the defendant, she experienced gender discrimination. After resigning, the plaintiff filed a workers compensation claim alleging adjustment disorder, anxiety and other afflictions associated with the alleged discrimination. Several months later, the plaintiff filed a gender discrimination claim in the trial court against the employer and arising out of this same harassment for which she sought workers compensation. While her civil action was pending, the plaintiff settled her workers compensation claim, and executed a release through which she discharged all claims and causes of action against the employer arising out of her psychological disorders. Significantly, the release extended to all of the defendant's employees. The defendant successfully argued that the release covered the plaintiff's civil claims as well as her workers compensation claims. The court agreed, finding that the reference in the workers compensation release to the fact that it covered claims against co-employees indicated that the release encompassed civil claims as well as the workers compensation claims. This decision emphasizes the importance of broadly worded releases in workers compensation claims. Typically, civil claims for gender discrimination and sexual harassment are not barred by the workers compensation statute; however, in this case, the plaintiff, (with the assistance of an attorney), agreed to an extremely broad release which necessarily destroyed her civil claim.

Copier Giant Charged With Racial Harassment By Current And Former African-American Employees

Xerox Corporation, a company frequently identified as a model for racial diversity, was the recipient of a complaint filed during the week of March 19, 2001, by current and former African-American employees. The employees alleged that Xerox, a company rated by Fortune Magazine as the 11th Best U.S. Company for Minorities to Work in 2000, failed to stop pervasive racial harassment of several of its service and clerical workers. One male employee alleged that he had complained to a manager about a book filled with racist jokes which had circulated the office, yet the manager allegedly took no action. Another female employee claimed that she found on her office computer an image of herself in a manner suggesting that she was a prostitute. When the employee brought the computer image to the attention of her manager, he allegedly put the picture up in his office rather than investigate the matter. Although these complaints set forth only one side of the story, they represent the painful truth that all employers, regardless of reputation and despite the best efforts to promote racial diversity and harmony, are at risk for EEOC complaints and class actions relating to workplace harassment and discrimination.