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Weekly Employment Brief

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Ninth Circuit strikes another blow to employment arbitration agreements

In a decision that strikes a blow against the enforceability of employment arbitration agreements, the Ninth Circuit Court of Appeals recently overturned a California district court's decision to compel arbitration. In *Circuit City Stores, Inc. v. Mantor,* Circuit City attempted to enforce an arbitration agreement after its former employee, Paul Mantor, sued the company. The district court granted Circuit City's motion. On appeal, Mantor claimed the arbitration agreement was unenforceable under California law because it was both procedurally and substantively unconscionable. Mantor claimed that, although there was an "opt-out" provision in the arbitration agreement, his managers had pressured him to sign it and had actually threatened to fire him if he refused to do so. The Ninth Circuit agreed that this pressure, coming from a party with significantly greater bargaining power, rendered the agreement procedurally unfair. Mantor also argued that many of the provisions of the agreement were substantively unconscionable. The court concurred, citing provisions concerning the statute of limitations, class actions, cost-splitting (including filing fees) and Circuit City's unilateral power to terminate or modify the agreement. Finally, the court reiterated its view, expressed in an earlier decision regarding a different Circuit City arbitration agreement, that all employer-employee arbitration agreements are subject to a rebuttable presumption of substantive unconscionability because the likelihood that an employer would sue an employee is so remote that the employee is essentially the only party giving up any rights. Although the court made passing reference to the importance of arbitration, it found the Circuit City agreement unconscionable on so many levels that it could not be saved, and struck it down in its entirety. The reasoning in this case places significant hurdles in front of employers seeking to enforce their arbitration agreements. Employers should take the time to review both their practices and the text of their agreements to ensure compliance with the rigorous requirements established by the court.

UPS settles disabilities-rights class action brought by deaf employees

United Parcel Service ("UPS") has agreed to pay $10 million to settle a disabilities-rights class action brought by deaf employees who claimed the company failed to provide workplace accommodations and thus denied them advancement opportunities. In *Bates v. United Parcel Service,* a class of approximately 1,000 hearing-impaired employees and job applicants claimed UPS failed to provide basic accommodations such as interpreters and TTY text-telephone systems in violation of the Americans with Disabilities Act. The suit also alleged these employees were denied promotions, access to meetings and delivery-driver jobs. Under the settlement, UPS denied wrongdoing but agreed to provide TTY telephones and interpreters; to begin tracking the applications and promotion of deaf employees; and to designate a human resources ombudsman in each UPS facility to answer questions about the settlement. The settlement did not resolve the claim that UPS unfairly excluded deaf employees from driving jobs by requiring all drivers to meet Department of Transportation hearing standards. The plaintiffs argue that they should be allowed to drive cars and vans under 10,000 pounds, which are not federally regulated. Trial will be scheduled on this remaining claim. The settlement requires court approval through a fairness hearing after nationwide distribution of notice of the proposed settlement. This case is an important reminder to employers of their obligations to provide reasonable accommodations to disabled employees and applicants.

Employer Alert

Individual corporate managers and officers will sleep a little less soundly this week, as the California Supreme Court has granted review of Reynolds v. Bement. In Reynolds, the California Court of Appeal had held that individual company officers cannot be held liable for unpaid wages, including unpaid overtime based on the erroneous classification of employees as exempt. (reported in the April 16, 2003 edition of the **W.E.B. Update**). The Supreme Court's grant of review means the Court of Appeal's favorable decision for employers is depublished and cannot be cited, leaving California without any cases that address the issue of individual liability under the State's wage and hour statutes. Until the Supreme Court renders a decision, employers will need to rely on the underlying rationale of the Reynolds decision to argue that there is no individual liability under California's wage and hour laws.