



FENWICK & WEST LLP

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Employers Need To Update “Old” Arbitration Agreements

Employers should revisit their arbitration agreements, if they haven’t already done so, to ensure that they remain in legal compliance after recent changes in the law. In a recent decision, *Blake v. Ecker*, the California Court of Appeal has ruled that the California Supreme Court’s decision in *Armandariz*, applies retroactively to arbitration agreements. This means that prudent employers should review any arbitration agreements between the employer and its employees to ensure those agreements meet the standards outlined in the *Armandariz* decision. In *Armandariz*, the California Supreme Court held that a valid agreement between an employee and employer to arbitrate all disputes, specifically discrimination claims, had to meet certain requirements. To be enforceable, an arbitration agreement must provide that the employee: (1) will have a neutral arbitrator hear the employee’s claims; (2) may take essential discovery prior to the arbitration; (3) will receive a written decision from the arbitrator that sets forth the essential findings and conclusions on which the decision is based; (4) may recover at arbitration all damages to which the employee would otherwise be entitled to recover in court (including attorney’s fees, costs and punitive damages; and (5) may not be required to bear more costs at arbitration than the employee would otherwise incur by bringing a court action. In addition, the arbitration must be mutual; that is, the arbitration agreement must limit the employer’s remedies and procedures in the same manner as the agreement limits the employee’s remedies and procedures. Finally, the arbitration agreement must have been

entered into fairly. This typically means providing the employee a copy of the agreement (which should be a stand alone document) and giving the employee the opportunity to review and understand the agreement before the agreement is signed.

EEOC Offers Guidance To Employers Regarding Assistance To Disabled Employees In Emergency Situations

The EEOC offered guidance to employers particularly concerned about being able to evacuate individuals who might require assistance because of a medical condition or disability during an emergency evacuation. According to the guidance, it is permissible under the ADA for an employer to ask employees whether, in the event of an evacuation, they will require assistance due to a disability or medical condition. The document, *Fact Sheet on Obtaining and Using Employee Medical Information as Part of Emergency Evacuation Procedures*, is available at www.eeoc.gov.

Californians Challenge AOL’s Use Of Unpaid Volunteers And Claim Employee Status

On-line companies commonly use volunteers to assist other on-line users and to monitor for inappropriate activity. However, both federal and state minimum-wage and overtime laws narrowly restrict the use of “volunteers.” Now, three Californians have filed suit against America Online Inc., alleging that they are due minimum wage for work done as “volunteers.” According to press releases, some 5,000 Californians served as chat room monitors for AOL over the past

allege, among other things, that they control chat rooms, maintain and enforce AOL's contract with its subscribers, post original work used by paying customers, help users resolve technical problems, and assist in the business. According to the plaintiffs, AOL provided the volunteers with free or discounted AOL service in exchange for their services.

Former Employees Go on Trial for Allegedly Posting Libelous Messages on the Internet

Employers are not infrequently faced with the challenge of disgruntled former employees who post negative comments about the company on the internet. In a case of two former Varian Medical Systems Inc. employees accused of posting libelous messages on the Internet about their former bosses are currently on trial in Santa Clara Superior Court. This is one of the first Internet libel cases to go to trial, and is highlighted, in part, by the defendants current postings of their version of the daily trial proceedings. Stay tuned for more....

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