

Arbitration Agreement Enforced Based On Continued Employment

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According to the Sixth Circuit Court of Appeals, two University of Phoenix employees agreed to mandatory arbitration agreements by continuing to work after receiving, but purportedly not electronically signing, the acknowledgment of the agreements. In the unpublished decision in *Aldrich v. University of Phoenix, Inc.*, the court found that the employees each electronically received the arbitration agreements, which were contained in the employee handbook. The court also found that the university's records showed each employee completed the acknowledgment form electronically (both individuals deny such). This acknowledgment form included specific language in which the employee understood and affirmed that the individual and university would "arbitrate employment-related claims." The arbitration agreement outlined in detail the arbitration process and included a class-action waiver. Importantly, the acknowledgment stated that acceptance of the arbitration agreement "is a condition of employment at the Company." Both employees continued working for the university for more than two years after receiving the handbook and arbitration agreement. Both employees were eventually terminated by the university. The employees subsequently brought claims in state court against the university, claiming wrongful termination. The employees also asserted a class claim for denial of overtime payments under the Kentucky wage law. The university removed the case to federal district court and moved to dismiss and compel arbitration. The lower court sided with the university and the Sixth Circuit Court of Appeals concurred. While the case is governed by Kentucky law wherein contracts do not require formal execution to be enforceable, the case is a good guide for employers desiring to have mandatory pre-dispute employment arbitration agreements and class waivers. By including specific language, such as requiring the execution of the agreement as a condition of employment, employers may be able to argue continued employment equates to acceptance of the agreements.

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