

N.J. Appellate Division Outlines Public Policy Limits on Employment Based Arbitration Agreements

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In two recent decisions both decided on August 23, 2018, the Appellate Division simultaneously confirmed the broad deference New Jersey courts give to Arbitration Agreements in the employment context, while also marking limitations as to how far even a clear agreement by the parties may extend when involving restrictions on essential employee rights.

In the matter of D.M. v. Same Day Delivery Service, Inc. et al., A-2374-173 decided on August 23, 2018, the Appellate Division upheld the validity of an Arbitration Agreement between the Plaintiff employee, and the Defendant employer, finding that despite poorly drafted language in the arbitration agreement, any claims by the plaintiff arising out of her employment were nevertheless subject to the arbitration agreement.

The Plaintiff had argued that the agreement to arbitrate was invalid because several parts of the Arbitration Agreement used vague or ambiguous language with errors in grammar and syntax, and later referring to a non-existent statute the “Title VII of the Civil Rights Acts of 19866” and using undefined terms such as “PEO” and “Rules.” Yet, despite these poorly drafted sections, the Court found that the remainder of the document made it sufficiently clear that the employee was agreeing to arbitrate any employment dispute and would be giving up the right to bring a claim in court. This was sufficient to uphold the arbitration agreement as valid.

The above decision once again confirms the principle that Arbitration Agreements will continue to be given deference by New Jersey courts, so long as a clear agreement to arbitrate is demonstrated.

In the second decision in Roman v. Bergen Logistics, A-5388-16T3, in an employment case involving a plaintiff employee alleging claims of sexual harassment and hostile work environment, the Appellate

Division again confirmed that an employee who knowingly assented to an arbitration agreement upon hiring was bound to arbitrate any such claims arising out of the employment.

However, in doing so, the Appellate Division struck down part of the Arbitration Agreement finding that despite clear language agreed to by the parties to bar the recovery of punitive damages under the Law Against Discrimination, such terms were invalid as a matter of public policy. The Appellate Division found that even though the parties had clearly agreed to waive the employee's right to such damages, that punitive damages were an essential element of the LAD's purpose in deterring and punishing egregious conduct, and thus could not be waived even by clear mutual assent.

The court's decision is a reminder that while Arbitration Agreements in the employment context are given strong deference, there are certain limits as to what rights the parties may mutually contract away. In this case, the Court found that the right to seek punitive damages was an essential right under NJLAD, such that even a clear intent of the parties to waive such rights could not be enforced. Employers must take note that in drafting arbitration agreements, such terms limiting employee rights may be invalid to the extent that they touch on "essential" employee rights under the numerous employment laws in New Jersey.