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Arbitration Clause in Employee Handbook Is Enforced

In *McAllister v. Smith Barney/Citigroup* (2d Cir. May 5, 2015), the Second Circuit issued a summary order that affirmed a district court decision compelling arbitration. The basis for the decision was a mandatory arbitration agreement in an employee handbook.

Plaintiff Angela McAllister did not have a signed employment agreement, and the district court found, based on her employment application and the absence of any evidence to the contrary, that she had always been an at-will employee. In 1991, when the plaintiff began work, her employer did not have an arbitration provision in its employee handbook, but in 1993 it added one. The district court found that the plaintiff's continued employment after the amendment to the handbook constituted her acceptance of the new terms in it, including the new arbitration provision.

The Second Circuit reviewed the district court's decision to compel the plaintiff to arbitrate *de novo*. The court noted that the Federal Arbitration Act requires arbitration agreements to be in writing but does not require them to be signed. It then applied Connecticut law to determine if the arbitration clause in the handbook was part of the plaintiff's employment contract.

The court noted that, under Connecticut law, all employment agreements not governed by express contracts "involve some sort of implied 'contract' of employment," the terms of which are determined from the facts and circumstances surrounding the parties' relationship. The court also noted that, in Connecticut, the issuance of a new employee handbook "constitutes an offer to modify the preexisting terms of employment . . ." which, to become effective, must be accepted.

Because the plaintiff remained employed 15 years after the handbook was modified to include an arbitration provision, and because computer screenshots showed that on three occasions in the past she had electronically accepted the new handbook, the court found that she had consented to the new terms in the handbook, including its arbitration requirement. The court held that the plaintiff's "bare denials" that she did not receive the new handbooks were not enough to create a genuine issue of fact, and it affirmed the judgment below compelling her to arbitrate her employment claims.

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