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Eighth Circuit Holds Computer-Generated Acknowledgment Does Not Constitute Employee's Acceptance of Arbitration Provision in Handbook

The U.S. Court of Appeals for the Eighth Circuit recently affirmed the denial of an employer's motion to compel arbitration. In *Shockley v. PrimeLending*, No. 18-1235 (8th Cir. July 15, 2019), the plaintiff, Shockley, filed a proposed collective action against her former employer, PrimeLending, alleging a violation of the Fair Labor Standards Act (FLSA). PrimeLending filed a motion to compel arbitration, relying on an arbitration provision in its employee handbook addendum ("Handbook"). The arbitration provision contained a delegation clause, granting authority to an arbitrator, rather than a court, to determine enforceability of the arbitration provision.

PrimeLending's Handbook was housed on its computer network, and clicking on the Handbook automatically generated an acknowledgment of review, and that same click would have opened a pop-up window containing a hyperlink to open the full text of the Handbook. There was no evidence, however, that Shockley ever opened or reviewed the Handbook's full text.

Applying principles of Missouri contract law, the Eighth Circuit held that PrimeLending failed to establish Shockley agreed to either the delegation clause or the arbitration provision. In so holding, the court reasoned that Shockley's click on the Handbook, and the subsequent system-generated acknowledgment, did not create an unequivocal acceptance on her part. The court further noted that there was no evidence showing Shockley ever opened or reviewed the Handbook's full text. Absent proof of unequivocal acceptance, no contract was formed as to the delegation clause or the arbitration provision. The Court thus affirmed the district court's denial of PrimeLending's motion to compel arbitration.

This decision serves as a reminder that a stand-alone arbitration agreement, rather than a provision within a handbook, is more likely to be upheld. In addition, if your organization on-boards new employees electronically, this decision highlights important legal consequences of "clickwrap" versus "browsewrap" agreements.

If your organization has any questions regarding this decision or if you would like to discuss a review or update to your arbitration agreement, please contact your Kutak Rock attorney or a member of our National Labor and Employment Practice. You may also visit us at www.KutakRock.com.

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