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**NEWSLETTER**

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## Employee Handbooks and Arbitration Clauses

\_\_\_\_\_Employee handbooks have been useful in providing information to the employees by management. The handbook, with the proper caveat, has been interpreted not to form any contract between the employee and employer.

Employee handbooks or manuals only serve to create contractual relationships insofar as employers make clear that they intend to be bound by such documents' terms.

Pennsylvania Courts have consistently held that an employee handbook, manual, or other communication only forms the basis of an implied contract if the employee shows that the employer affirmatively intended that it was to do so.

Recently, a Philadelphia Common Pleas Court Judge reinforced the general rule and dismissed Plaintiff's Complaint for wrongful termination and retaliation as Plaintiff failed to attach a copy of her contract to the Complaint, or present some other compelling evidence that it existed, and even then, her evidence would need to be closely reviewed. **Dufner v. American College of Physicians** (PICS #05-1156)

An employment handbook which provided for Arbitration of employee - management disputes was recently reviewed by the Pennsylvania Superior Court.

Pennsylvania's Statutory Arbitration Act provides that written agreements to arbitrate disputes are valid and enforceable "save upon such grounds as exist at law or equity relating to the validity, enforceability or revocation of any contract." The agreements are upheld only where it's clear the parties agreed "in a clear and unmistakable manner" to arbitrate.

In **Quiles v. Financial Exchange Co.**, Quiles was from Puerto Rico, had difficulty with the English language, never completed high school and was unfamiliar with the term arbitration. The company handbook stated that all employees hired after June 1995 agreed to be bound by the terms of the company's internal dispute procedure.

The Superior Court found Ms. Quiles was never given the opportunity to read the terms of the arbitration agreement because she had not received the handbook and there was nothing in the acknowledgment form indicating she would be waiving her right to a judicial forum. Citing the Pennsylvania case of ***Morosetti v. Louisiana Land and Exploration Co.***, 564 A.2d 151 (Pa. 1989). The Superior Court held that although the arbitration policy had been published, it had not been communicated to the employee ensuring the handbook had been distributed.

### What to Do

An employment related arbitration clause in the handbook can be enforceable and a valuable tool to the employer in economically resolving employee disputes. The arbitration agreement must be included in the written materials and distributed to the employee.

An acknowledgment of the receipt and reading of the employment manual must be signed by the employee. Consideration may be given to adding an additional paragraph to the acknowledgment form, such as, "This manual contains an arbitration agreement by which you waive your rights to present certain employment related disputes in Court."

The key is effective communication and publication of the Arbitration clause to the employee.

### New Jersey Law

***Leodori v. Cigna Corporation***, 175 NJ 293, 814 A.2d 1098 (2001) sets forth guidelines in New Jersey for effective waiver of rights provisions contained in employee handbooks.