

## Court rules that arbitration clause is too narrow

A recent decision by the Tenth U.S. Circuit Court of Appeals, which covers Colorado, demonstrates that narrowly drafted arbitration clauses will be strictly construed. Arbitration clauses are appearing in more employment agreements as employers seek to reduce the expenses of litigating employees' claims.

### The Case

Three individuals responded to FedEx advertisements for package delivery contractors in Colorado. A FedEx recruiter told them they would earn approximately \$1,500 per week by working 10 to 12 hours each day. They were told that they had to purchase their routes and FedEx trucks, but if they left the company they would receive assistance in selling them.

The former employees alleged that once they began working, for more than 12 hours a day, they couldn't earn more than \$400 per week. All three drivers eventually resigned with complaints that FedEx failed to meet the recruitment process promises.

The three former employees filed a lawsuit in Colorado state court claiming fraud, negligent misrepresentation, breach of contract, breach of the covenant of good faith and fair dealing, and deceptive trade practices. FedEx had the case transferred to federal district court and filed a request to dismiss two of the drivers' claims.

### The Arbitration Clause

FedEx argued that the court lacked jurisdiction over the claims because there was an arbitration clause in the employment agreements. The company wanted the claims dismissed and forced into arbitration. If this happened, the company would likely ask to have the

claims dismissed again because they weren't filed within 90 days as required by the arbitration clause.

The court said the arbitration clause was narrow and limited to disputes over FedEx's termination of the operating agreement. The court said the claims didn't fall within the arbitration clause requirements. FedEx appealed the decision.

### Three-Step Inquiry

The Tenth U.S. Circuit Court of Appeals agreed with the trial court. The court explained the application of a three-step inquiry to determine whether a dispute is within the scope of an arbitration clause:

- The court should classify the arbitration clause as broad or narrow
- If the court determines that the arbitration clause is narrow, the court should determine whether the dispute concerns an issue within the scope of the clause
- If the arbitration clause is narrow and the issue is of a collateral nature, the issue is generally beyond the scope of the clause

### What This Case Means to Counties

All Colorado employers should note that the company in this case couldn't rely on its arbitration clause because the clause wasn't drafted broadly enough. If a county uses an arbitration clause in an employment contract, the county should review the clause with legal counsel to make sure the clause is broad enough.

For more information, contact CTSI at 303-861-0507.

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