

Employment Law Notes

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ARBITRATION

Court Upholds Employer's Carve-Outs in Arbitration Agreement

Division I of the Washington Court of Appeals has upheld an arbitration agreement that carved out certain kinds of disputes from its scope, even though the carve-outs clearly favored the employer.

Legal Background

The U.S. Supreme Court's 2001 ruling in *Circuit City Stores v. Adams* established that in cases subject to the Federal Arbitration Act, pre-dispute arbitration agreements are generally enforceable even when the employee alleges the violation of statutory rights. Since then, plaintiffs have continued to challenge the enforceability of arbitration agreements, focusing primarily on fairness issues. Courts hostile to arbitration will void agreements on grounds that they are too one-sided or expensive for the employee.

The Case

Derek Walters signed an employment agreement that included confidentiality and non-compete provisions. It also had an arbitration clause that required arbitration of "any dispute" except those relating to the confidentiality and non-competition clauses. When Walters later sued his employer for overtime pay, the employer got the trial court to stay the suit pending arbitration.

On appeal, Walters challenged the validity of the arbitration agreement, in part based on the carve-

outs. He argued that the agreement was one-sided, because the only disputes the employer would likely want to pursue would be under the confidentiality or non-compete clauses, and the employer was free to go to court with those. Thus, Walters argued, the agreement really only bound him to arbitrate, not the employer.

The court rejected Walters' argument, reasoning that the employer was still bound to arbitrate disputes, including claims brought against it by its employees. As long as both were bound, the agreement was valid.

The case is *Walters v. AAA Waterproofing, Inc.*, Washington Court of Appeals Div. I, decided on March 1, 2004.

Why it Matters

Employers need to be able to carve out confidentiality and non-compete issues from their arbitration agreements so they can move quickly to get court-issued restraining orders when those rights are violated. At least in Division I in Washington, employers can now do so with confidence.

Does Your Company Require Arbitration?

There are pros and cons in requiring employees to sign arbitration agreements, but the balance usually tips in favor of having them. They must be carefully drafted in order to withstand challenges by employees, however.

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