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Texas Supreme Court Reaffirms Enforceability of Arbitration Provisions Contained in Employment Agreements That Are Not Conditioned on an Employee's Continued At-Will Employment

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Arbitration provisions in employment agreements have become increasingly more commonplace in recent years as companies continue to value the confidentiality and the potential for quick resolution that arbitration offers in employment disputes. Both Federal and State legislatures have continued to develop policies favoring arbitration as an alternative means to resolving legal disputes. However, arbitration agreements contained in employment agreements run the risk of being unenforceable if they are interpreted as being conditioned on an employee's at-will employment. The public policy behind this is to prevent one of the parties to the agreement from avoiding performance by simply terminating the employment relationship, thereby rendering the agreement to arbitrate illusory.

Under Texas law, an employee's at-will employment does not prohibit the employee and employer from entering into other agreements as long as the employee's continued employment is not relied on as consideration for the agreement.[1] The Texas Supreme Court has drawn a distinction between arbitration agreements that are *conditioned on* an employee's continued employment and those that are *accepted by* an employee's continuing employment, holding that the latter does not render the agreement unenforceable.[2] Therefore, it is important for companies to take careful measures when drafting arbitration policies to ensure they are not conditioned on their employees' at-will employment.

In interpreting arbitration agreements, traditional principles of contracts apply.[3] The plain language controls, '[w]ords must be construed 'in the context in which they are used,'" and courts must "examine and consider the entire writing in an effort to harmonize and give effect to all the provisions of the contract so that none will be rendered meaningless."[4]

In the Texas Supreme Court's recent decision in *In re Whataburger Restaurants LLC*, the Court enforced an arbitration agreement in an employment agreement which stated:

All employees, by accepting employment or by continuing employment after the implementation of [the company's arbitration policy], shall be required to submit any legally recognized claim or dispute related to their employment . . . to arbitration . . . . An Employee who chooses to continue employment for at least thirty (30) days after receiving written notice of an amendment or modification of the Policy shall be deemed to have consented.[5]

The employee argued that this agreement was illusory because it conditioned the parties' promises to arbitrate on the employee's continued, at-will employment.[6] However, the Texas Supreme Court held that the language of the arbitration agreement, in this case, did not have this effect, but rather was accepted by the employee's decision to continue his employment after receiving notice of the arbitration policy.[7] The Court further reasoned that, because the employer

provided a reciprocal promise to arbitrate, the employee's agreement to arbitrate was supported by adequate consideration.[8] Additionally, the arbitration agreement was not dependent on the employee's employment status because it continued beyond the end of the employment relationship.[9]

The Texas Supreme Court has also enforced arbitration provisions in the employment context where an employer creates an arbitration policy or modifies an existing arbitration policy with its employees after they have begun employment.[10] In such cases, the employer must (1) provide notice of the change to the employee, and (2) demonstrate that the employee accepted the change.[11] If the at-will employee continues working after being notified of the changes to the arbitration policy, they will have been deemed to have accepted the changes as a matter of law.[12]

TAKEAWAY:

The considerations that factor into whether an arbitration agreement is conditioned on an employee's at-will employment are nuanced, and the law continues to develop in this area. However, employers should not let this discourage them from taking advantage of the potential benefits that arbitration has to offer in resolving employment disputes efficiently. To ensure that arbitration policies are up to date with current law and are not at risk of being invalidated, employers should consult with attorneys well-versed in the most recent developments in the law on arbitration agreements.

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[1] *See J.M. Davidson, Inc. v. Webster*, 128 S.W.3d 223, 228 (Tex. 2003).

[2] *See In re Halliburton Co*., 80 S.W.3d 566, 569–70 (Tex. 2002).

[3] *See In re Whataburger Restaurants LLC*, 645 S.W.3d 188, 194 (Tex. 2022) (citing *Webster*, 128 S.W.3d at 227, 229; *Wagner v. Apache Corp*., 627 S.W.3d 277, 285 (Tex. 2021)).

[4] *Id*. (citations omitted).

[5] *Id.* at 191.

[6] *Id*. at 196-197.

[7] *Id*.

[8] *Id*. at 197-198.

[9] *Id*. at 198.

[10] *See Halliburton*, 80 S.W.3d 566.

[11] *Id.* at 568.

[12] *Id*.

Related Attorneys

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