

# The Arbitration Section in Your Employee Handbook Is Not an Agreement to Arbitrate

## *Insight*

An employer needs to be able to prove acceptance by each employee of an “offer” of arbitration, points out Mintz, Levin.

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# Eighth Circuit Issues a Reminder: Arbitration Agreements Must be Contracts

## *Insight*

If the arbitration agreement is entirely separate from the handbook, any disclaimers contained in the handbook are less likely to impact enforcement of that agreement, according to Littler Mendelson.

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# Don't Overreach by Retaining the Unilateral Right to

# Modify An Arbitration Agreement

## *Insight*

If a contract is too one-sided, it can be ruled illusory and unenforceable, warns Shepard Davidson in the Burns Levinson In-House Advisor blog.

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# U.S. Supreme Court to Rule on Important International Arbitration Issue

## *Insight*

The answer to the question depends on where in the United States the dispute is being litigated, according to China Law Blog.

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# Manufacturers Revisit Mandatory Arbitration Agreements

## *News*

Two recent court decisions dealing with mandatory arbitration agreements highlight why some manufacturers may gain by

requiring pre-dispute employment arbitration agreements.

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## **Eighth Circuit Says a Delegation Clause Isn't Valid (and Calls Wrap Contract Formation Into Doubt)**

### ***Insight***

The ruling tosses all manner of “wrap” agreements into doubt, writes Henry Allen Blair.

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## **Court Holds Delta's Privacy Policy Isn't a Contract**

### ***Insight***

The key to Delta's victory may have been a novel theory that its privacy policy should not be treated as a contract with a consumer, according to Manatt, Phelps & Phillips.

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# Don't Assume That Closely Related Agreements Will Be Interpreted As One Contract

## *Insight*

Even very closely related agreements still may be viewed as completely independent if there is a claim that only one of them has been breached, warns Burns & Levinson.

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# Defining the Limits of Arbitral Authority

## *Insight*

Sometimes arbitrators issue awards that impose their own view of a “just” remedy at the expense of the painstakingly negotiated provisions in the parties’ contracts, writes Robert J. Kaler of Holland & Knight.

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# Ninth Circuit Enforces Online Arbitration Clause That Tested ‘Outer Limits’ of

# Reasonable Conspicuousness in Consumer Contract

## *Insight*

The class action complaint in *Holl* alleged that UPS systematically overcharged its retail customers.

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# Avoiding Mishaps When Drafting Agreements at the End of Mediation

## *Insight*

Holland & Knight offers some tips for preparing a memorandum of understanding or similar agreement executed at the conclusion of the mediation.

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# Employers May Compel Arbitration Even Where Employee Failed to Sign Arbitration Agreement

## *Insight*

The plaintiff's acceptance of its terms could be inferred from

her failure to opt-out within 14 days outlined in the policy and by her continued employment, the court ruled.

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## **Deborah Hankinson Honored Among Best Lawyers in Dallas for ADR Practice**

### ***News***

Attorney Deborah Hankinson has been selected for the 14th time to D Magazine's list of the Best Lawyers in Dallas for her practice in conflict resolution.

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## **Waiving Class-Wide Arbitrations in Contracts**

### ***Insight***

It is clear from recent Supreme Court decisions that class action arbitration waivers do not violate the law, according to a Faegre Baker Daniels website post.

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# What Did I Agree To? Importance of Reviewing Arbitration Provisions

## *Insight*

The case presented a conflict between the parties' contractually-adopted arbitration rules and an individual party's statutory rights under the FAA.

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# Keeping Boilerplate Coupled to the Transaction: The Ongoing Struggles with 'Wrap' Arbitration Provisions

## *Insight*

The relevant hyperlink concerning arbitration was "neither spatially nor temporally coupled with the transaction," the court found.

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**Arbitration**

**Award**

# **‘Irrational’ Because It Disregards Contract’s Plain-Text to Reach a Just Result**

## ***Insight***

The Ninth Circuit has ruled in a contract arbitration case that incorporated multiple Federal Acquisition Regulation clauses that govern the recovery of expenses in the event a contractor is terminated for convenience.

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# **‘Just What Was Needed’: Another Way to Waive a Right to Arbitrate**

## ***Insight***

At least two New York State trial courts found that an unexcused default in responding to a summons and complaint can be deemed a waiver of a contractual right to arbitrate, according to Mintz, Levin.

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# **Ex-Winston Lawyer Can’t Be**



# Forced to Arbitrate Job Claims

## *News*

Bloomberg Law is reporting that a former Winston & Strawn LLP intellectual property attorney can litigate—and can't be forced to arbitrate—her pay, bias, and retaliation claims.

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# Notice of Terms via Buried Link within a Post-Sale Email Unenforceable

## *Insight*

The Second Circuit affirmed a ruling that denied a web service's motion to compel arbitration, finding that the user did not have reasonable notice of the arbitration provision contained in the terms and conditions that were communicated via a hyperlink in a post-sale email.