

Employee's handwritten signature makes arbitration agreement easier to enforce

By Dan Eaton

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Many California employers ask incoming and existing employees to agree in advance to arbitrate any employment-related disputes and give up the right to bring such claims in court. Employees often are asked to “sign” these arbitration agreements electronically, which is administratively easier than having the employee sign it in their handwriting.

Last month in *Iyere v. Wise Auto Group*, the California Court of Appeal compelled three former Wise Auto employees to arbitrate their wrongful termination and 24 other employment-related claims against the company largely because each employee had signed the binding arbitration agreement in their own handwriting.



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Handwritten signature on agreement shows former employees agreed to arbitrate dispute

Wise Auto had the initial burden of proving the employees actually had agreed to arbitrate their claims. In resisting Wise Auto's motion to compel arbitration, the plaintiff-employees signed sworn declarations that: (1) they did not recall ever reading or signing the arbitration agreement; (2) the arbitration agreement was part of a “large stack of documents” they were rushed to sign on their first day of work; (3) no one explained the agreement; and (4) they would not have signed the agreement had they known they were giving up their right to file a lawsuit against Wise Auto and that they were free to opt out of the agreement. None of the employees claimed their signature had been forged.

The court of appeal, however, held that an employee who handwrites his or her signature on an arbitration agreement cannot avoid arbitrating an employment dispute by saying he or she cannot recall doing so. The court observed “there is no conflict between [the employees] having signed a document on which their handwritten signature appears and, two years later, being unable to recall doing so. In the absence of any evidence that their purported signatures were not their own, there is no evidence that plaintiffs did not in fact sign the agreement.”

The court of appeal observed that, by contrast, it can be “quite daunting” for an employer to prove an employee electronically signed an arbitration agreement. An employee may avoid arbitration by saying he or she doesn't recall affixing an electronic signature. “An individual cannot affirm or disavow an electronic signature from the face of a computer printout, but an individual normally can recognize or disavow a handwritten signature that purports to be his or her own.”

Nor could the employees avoid arbitration by claiming they did not read the agreement before signing it. “[F]ailing to read an agreement before signing it does not prevent the formation of a contract.”

Court finds substance of agreement was not unfair

Having found the former employees and Wise Auto had agreed to arbitrate the dispute, the court of appeal rejected plaintiffs' claims that the substance of the arbitration agreement was unconscionable. For one thing, the court of appeal ruled that Wise Auto's right in the arbitration agreement to choose which of two "well recognized and respected alternative resolution firms" would hear the former employees' claims against the company did not make the agreement one-sided. There was no evidence arbitrators in one of the firms tended to rule in favor of employers.

The lesson: Employers should designate in their arbitration agreement one or more established alternative dispute resolution providers to arbitrate employment disputes.

Court of appeal notes employees could have refused to sign arbitration agreement

The agreement specifically said the employees could decline to sign the arbitration agreement and still become or remain a Wise Auto employee. Until courts finally resolve whether California's statute banning mandatory pre-dispute employment arbitration agreements (AB 51) is valid, employers should consider giving employees the express right to opt out without consequence.

An arbitration agreement may eliminate an employer's risk of a runaway jury verdict on employment-related claims only if an employer can show the employee actually signed the agreement and can defeat an employee's contentions that the agreement is procedurally and substantively unfair. Getting an employee's handwritten signature on the arbitration agreement will help meet the first challenge; drafting a balanced agreement will help meet the second.

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