



CLIENT ALERT EMPLOYERS SHOULD CHECK THEIR ARBITRATION AGREEMENTS IN LIGHT OF FIFTH CIRCUIT CASE

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Huckaba v. Ref-Chem, LP

On June 11, 2018, the Fifth Circuit (which governs Texas federal courts) issued an important decision governing arbitration agreements between employers and employees. The court found that an arbitration agreement between an employer and an employee was not enforceable because the employer had not signed it. This decision represents a departure from other cases in Texas, such as *In re Halliburton Co.*, where Texas courts have found a signature by the employer is not required to enforce an arbitration agreement.

Arbitration Agreement Required Signature By Employer

In *Huckaba v. Ref-Chem, LP*, Mrs. Huckaba sued her employer in federal court, and the employer moved to compel arbitration. The Court found the following factors to be dispositive: (1) the arbitration agreement at issue included a statement that said, "By signing this agreement, the parties are giving up any rights they may have to sue each other;" (2) the agreement contained a clause prohibiting modifications unless they were, "in writing and signed by all parties;" and (3) there was a signature block for the employer. The Court found that because the terms of the arbitration agreement demonstrated an intent by the parties that it be signed by *both* the employer and the employee, the fact that it was *not* signed by the employer meant that the agreement was not enforceable.

Surprisingly, the Fifth Circuit rejected the lower court's conclusion that continued employment of the employee after signing the arbitration agreement constituted acceptance of the agreement by both the employer and employee. This was the argument relied upon by the Texas Supreme Court in the *Halliburton* case when it enforced an unsigned arbitration agreement in the employer/employee context. *Ref-Chem* is a reminder that courts are required to interpret arbitration agreements as they are written. Therefore, if an arbitration agreement suggests that signatures by both the employer and the employee are required, the court may hold the parties to that standard.

What Does This Mean For Employers?

Employers in Texas should reexamine their arbitration agreements to ensure they are still enforceable in the wake of this Fifth Circuit decision. Any language in an arbitration agreement suggesting that a signature by the employer is required may, in turn, require signature by the employer to be enforceable. Be sure to do an annual review of your arbitration agreements to ensure that they remain enforceable in light of new case law surrounding the enforceability of these important agreements.