Legal Update Article

Puerto Rico Supreme Court Rules Continued Employment is Valid Consent to an Arbitration Agreement

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The Puerto Rico Supreme Court has confirmed that continued employment may be valid consent to mandatory employment arbitration agreements in a matter of first impression. *Aponte et al. v. Pfizer Pharmaceuticals, LLC,*CC 2018-748, __ D.P.R. __ (Nov. 10, 2021). The 5-3 decision puts to rest any notion that, in Puerto Rico, different rules could apply to arbitration agreements adopted under the Federal Arbitration Act (FAA).

The majority opinion, written by Honorable Justice Feliberti Cintrón, holds for the first time in Puerto Rico that continued employment is a valid form to secure consent to an arbitration agreement under the FAA. In addition, agreeing with other federal court decisions, the Court's decision clarifies that a signature is not needed to establish consent to an arbitration agreement.

Pfizer was represented by Sara E. Colón-Acevedo and Juan Felipe Santos of Jackson Lewis.

Background

The facts of the case before the Supreme Court were undisputed. The employer adopted a mandatory arbitration program covering all employment disputes and the agreement expressly stated that it was adopted under the FAA.

All employees who would be covered by the program were notified by email. Additional emails with links to the arbitration agreement, a list of questions and answers, and a learning module explaining the program were sent to the employees, including the 25 plaintiffs. In all communications and documents, employees were advised that, if they began employment or continued employment 60 days after receiving the arbitration agreement, they would be subject to agreement's terms. Signing the agreement was not a requirement because consent was given by merely continuing working. A paper copy of the agreement was not provided, but employees had the option of printing the document or reviewing it online.

All of the plaintiffs in the case received the emails as evidenced by a sworn statement submitted by the employer, albeit some of the plaintiffs filed sworn statements alleging they did not recall receiving the emails. All of the plaintiffs continued working for the employer more than 60 days after receiving the emails with the link to the agreement. The plaintiffs eventually were terminated due to a company reorganization. Despite the arbitration agreement, they filed a claim before court alleging unjustified dismissal under PR Act No. 80-1976.

The employer submitted its answer to the complaint, as well as a motion to dismiss the case and compel arbitration. The employer also submitted supporting documents, including a sworn statement, establishing that all plaintiffs had agreed to arbitrate the claims included in the complaint.

The trial court dismissed the lawsuit, but the Court of Appeals vacated the judgment, finding a controversy existed as to whether the plaintiffs had validly consented to the arbitration agreement. The Court of Appeals did not recognize tacit or implicit consent as a way of agreeing to an arbitration agreement. It ordered the trial court to hold a hearing on the issue of consent. The employer filed a *writ of certiorari* (the Society for Human Resources Management – Puerto Rico Chapter, the Puerto Rico Manufacturers Association, and the Pharmaceutical Industry Association filed friend-of-the-court briefs in support of the employer) before the Puerto Rico Supreme Court and the Court of Appeals decision was vacated.

Consent

The Court majority held that, under the FAA, parties can validly agree to arbitrate statutory claims, even those related to employment.

The majority summarized and discussed past and recent decisions issued by the U.S. Supreme Court related to arbitration agreements under the FAA. The Puerto Rico Supreme Court recognized that, even though the formation of an arbitration agreement is controlled by state or local laws, federal law should be used to interpret these contracts and special requirements cannot be imposed. Absent a requirement applicable to all contracts, the Court continued, arbitration agreements cannot be singled out or be subjected to a stricter scrutiny.

Citing federal case law and the provisions of the Puerto Rico Civil Code of 1930, the Court went on to recognize the following:

1. Sending an agreement to arbitrate electronically is acceptable and does not violate the requirement that it be in writing.
2. Consent to an arbitration agreement could be established under the tacit or implicit theory of consent recognized in Puerto Rico.

The Court's majority rejected the argument that consent to an arbitration agreement had to be explicit or in writing as contrary to FAA mandate. Under the facts of the case, the plaintiffs' conduct was sufficient to establish their consent to the agreement, the Court said, as they remained employed more than 60 days after receiving the arbitration agreement. That was enough for consent, the Court held, given the fact the agreement did not require a signature and it expressly indicated what conduct from the plaintiff would establish consent. The Court also recognized that the agreement did not affect substantive rights, as employees were allowed to file the same claims in arbitration they would have filed in court and be entitled to the same remedies.

Dissents

The Honorable Chief Justice Maite Oronoz dissented from the majority opinion. She suggested that an arbitration agreement without an opt-out provision lacks the element of being voluntary and, thus, shows lack of consent.

The Honorable Justice Luis Estrella wrote a dissenting opinion, joined by Justice Colón Pérez, noting that mandatory arbitration agreements are against public policy because they are not voluntary and, thus, lack consent.

None of these dissents seem to consider the fact that the FAA preempts state law and that the U.S. Supreme Court has consistently held that a state or territory cannot impose special

requirements to an arbitration agreement that do not apply to other types of contracts in that jurisdiction.

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Please contact a Jackson Lewis attorney with any questions about arbitration agreements or other issues.