

## Michigan Court of Appeals Decision Cautions Need for Review of Arbitration Agreements in Employee Handbooks

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On June 23, 2022, the Michigan Court of Appeals ruled that an arbitration agreement contained in a personnel manual was not enforceable because the associated disclaimer indicated that the manual did not create a “contract of employment.” This decision is a reminder that employers should use free-standing agreements related to certain employee obligations (e.g., arbitration, non-competition, confidentiality), to maintain their enforceability.

Two former employees of Catholic Charities of Shiawassee and Genesee Counties (“Catholic Charities”) sued the organization and their supervisor, alleging race-based employment discrimination and retaliation. The trial court dismissed, finding that the parties had entered into binding arbitration agreements.

The Catholic Charities personnel policy manual contained an arbitration “agreement,” signed by both plaintiffs, which stated an intent to arbitrate employment-related claims and specified the rules and procedures that would apply. The provisions outlining the arbitration procedure included a disclaimer, providing that “[t]he provisions of this arbitration procedure does [sic] not create any contract of employment, express or otherwise, and does not, in any way, alter the ‘at-will’ employment relationship between the parties.” Plaintiffs argued that the parties were not bound by their arbitration agreements because the disclaimer demonstrated that defendants did not intend to be bound. Defendants countered that the arbitration agreement was a separate agreement distinct from the rest of the policy manual.

The Court of Appeals emphasized that, under Michigan law, a relevant consideration in determining whether employees are bound by an employment manual’s arbitration provision is whether the manual contains a disclaimer expressing that its provisions do not form any contractual relationship. Analogizing these facts with one of its prior decisions, the Court of Appeals ruled that the disclaimer’s language providing that the manual did not create any “contract of employment,” was “a manifestation of defendants’ intent not to be bound by the arbitration agreements.” The Court of Appeals reversed the trial court’s decision granting summary disposition.

While this unpublished decision does not signal a change under Michigan law, it is a cautionary reminder that merely including arbitration-related provisions in employee handbooks might not be sufficient. As in Catholic Charities, such “agreements” could be construed as non-binding policies or general communications, especially where the handbook contains the common disclaimer that it is not a binding contract.

If you have any questions, please feel free to contact the authors or your Miller Canfield attorney.