

EMPLOYMENT LAW UPDATE

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California Law

Temporary Agency's Arbitration Agreement Does Not Apply to Job Applicants Who Were Not Hired.

Balandran v. Labor Ready, Inc., 04 C.D.O.S. 11152 (2nd App. Dist.; Dec. 17, 2004)

By Jason A. Geller and Juan C. Araneda

Defendant Labor Ready provides temporary labor to its customers. Labor Ready requires its temporary laborers to sign an application agreeing that they will not be considered employed until they have been assigned to work on a specific job. Labor Ready's business model works on the premise that Labor Ready, not its customers, employs the workers. However, Labor Ready does not consider the workers to be its employees at any time other than when they are on the job for a customer. When the worker finishes work at the end of the day, Labor Ready deems the worker to have quit until such time as the worker is sent on another assignment.

This view of the employment relationship is set forth in Labor Ready's application for employment. The application in pertinent part reads, "I understand that my employment with Labor Ready is on a day to day basis. That is, at the end of the workday, I will be deemed to have quit until I report to the dispatch office and receive a work assignment at a later date. Failure to request a new assignment will affect

eligibility to unemployment compensation. I understand that merely registering my availability to work does not constitute employment, and I am not re-employed until I actually receive a new work assignment."

The same section of the application contains an arbitration clause which reads, "I agree that any dispute arising out of my employment, including any claims of discrimination, harassment, or wrongful termination, that I believe I have against Labor Ready and all other employment-related issues (excluding only claims arising under the National Labor Relations Act or otherwise within the jurisdiction of the National Labor Relations Board) will be resolved by arbitration as my sole remedy."

In 2001, International Window Corporation ("IWC") wanted only male workers to be sent to its jobsite, and Labor Ready agreed. Thereafter, some 120 women who applied for jobs with Labor Ready filed a lawsuit against Labor Ready and IWC. They alleged that they were not hired by Labor Ready to work at IWC as a result of illegal

gender discrimination. Labor Ready petitioned to compel arbitration, relying on the arbitration clause in its application for employment. However, plaintiffs opposed the motion arguing that their claims were based on pre-employment discrimination, did not arise out of “employment” and, therefore, were outside the scope of the arbitration clause. The trial court denied Labor Ready’s petition on the grounds that the arbitration agreement did not apply to the plaintiffs’ claims.

On appeal, the Court of Appeal concluded that Labor Ready was bound by its own strict definition of employment, as set forth in its employment application. That definition, by its terms, limited the scope of the arbitration clause to disputes arising out of “employment” and thereby did not apply to plaintiffs’ pre-employment claims. Accordingly, the arbitration clause was deemed to not apply to plaintiffs, who were never employed to work.

This case illustrates the importance of carefully drafting arbitration agreements. Courts will carefully scrutinize the terms of such agreements and may often interpret them against the drafting party, i.e., the employer.

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