

It's Over Johnny: Judge Rambo Provides Outline For Enforcement of an Arbitration Agreement in Sex Harassment Case

In *Keller v. Pfizer, Inc.*, Judge Sylvia Rambo of the United States District for the Middle District of Pennsylvania¹ provided a tutorial for employers to follow when rolling out arbitration agreements to new employees. Keller filed a complaint in court against Pfizer alleging that she was subject to a hostile work environment. Pfizer moved to compel the claims to arbitration. Pfizer argued that Keller signed an arbitration agreement as a prerequisite to her employment, agreeing to arbitrate employment-related claims as a condition of her employment. Keller argued (essentially) that she did not remember signing the agreement, was not familiar with arbitration agreements, and could not recall the contents of the agreement.

Pfizer proved that its arbitration policy was part of its new hire packet, that it provided a mandatory online training module about its arbitration agreement, that the training module required the employee to click through several online slides concerning the arbitration requirement after reading them, and that continued employment constituted consent to the arbitration agreement. Pfizer also proved that Keller's electronic signature was valid, and that she continued her employment beyond 60 days. Furthermore, the agreement was "far from incomprehensible," and Pfizer instructed Keller to read the agreement, had an online tutorial to explain the arbitration process, and maintained a "frequently asked questions" website that offered further information regarding the arbitration process.

Despite saying that "arbitration clauses must be placed on equal footing with other issues of contractual interpretation under applicable state law," the Court in reality put Pfizer through heightened scrutiny before compelling arbitration.

The lesson for employers seeking to enforce an arbitration-based employment dispute resolution process for statutory claims like sex, race, or age discrimination is that an ounce of preparedness is worth a pound of cure. A separate arbitration policy, plainly and simply written, in the new hire packet, with mandatory training to enhance understanding, with electronic confirmation of a review, and with transparent access and information regarding the arbitration process should be enough to enforce the agreement and compel arbitration. Make no mistake, the Courts are closely scrutinizing arbitration clauses related to discrimination claims; but if you follow Judge Rambo's opinion, "it's over, Johnny."² Expect your motion to compel to be granted.

¹ Civil Action No. 1:17-CV-1883 (Nov. 8, 2018).

² For those of you who miss the reference, see *First Blood*, circa 1982.