Labor and Employment Alert: Kentucky Supreme Court Prohibits Mandatory Arbitration Agreements

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In September 2018, in *Northern Kentucky Area Development District v. Danielle Snyder*, the Kentucky Supreme Court held that employers are not permitted to require employees to enter into an arbitration agreement as a condition of employment. Although the ruling pertained to a government entity, the ruling applies equally to private sector employers in the state.

Danielle Snyder was employed by the Northern Kentucky Area Developmental District (NKADD), a public entity. NKADD required Snyder to sign an arbitration agreement mandating arbitration of any dispute she had with NKADD. If Snyder refused to sign the agreement or revoked her acceptance of the arbitration agreement, her employment would terminate. Synder filed an action in a state trial court asserting claims under the Kentucky Whistleblower Act and the Kentucky Wages and Hours Act. NKADD moved to stay the proceedings and compel arbitration based on Synder's arbitration agreement. Synder argued, and the trial and appellate courts agreed, that Kentucky law prohibits state agencies, including NKADD, from entering into arbitration agreements. Synder's arbitration agreement was void because NKADD never had the authority to enter into an arbitration agreement in the first place.

Upon review, the Kentucky Supreme Court expanded the lower courts' ruling, holding that Kentucky law prohibits employers from conditioning employment on agreeing to an arbitration agreement. The Supreme Court's ruling was based on its interpretation of Kentucky Revised Statute §336.700(2), which states that "no employer shall require as condition or precondition of employment that any employee or person seeking employment . . . arbitrate . . . any existing or future claim, right, or benefit."

In response to NKADD's argument that the Federal Arbitration Act (FAA) preempts KRS §336.700, the Kentucky Supreme Court said the FAA preempts only state law that discriminates against or disfavors arbitration agreements. According to the Court, KRS §366.700 "does not actually attack, single out, or specifically discriminate against

arbitration agreements." Rather, the state statute "is an anti-employment discrimination provision" that "uniformly voids any agreement diminishing an employee's rights against an employer when that agreement had to be signed by the employee on penalty of termination or as a predicate to working for the employer." The Court thus held that "the FAA does not preempt KRS 336.700(2) because it does not discriminate against arbitration agreements but rather the conditioning of employment on an employee's agreement to arbitrate."

The Court noted that KRS §366.700(2) does not prevent an employee from voluntarily agreeing to enter into an arbitration agreement; rather, the statute forbids employers from firing or refusing to hire individuals based on their willingness to enter into such agreements.

It seems difficult to reconcile the *Snyder* decision with the United States Supreme Court's 2018 decision in *Epic Systems Corp. v. Lewis* (our Client Alert on that decision is available here) that expressly upheld mandatory arbitration agreements or its 2017 decision in *Kindred Nursing Centers v. Clark* that prohibits rules that single out arbitration for unfavorable treatment. While *Snyder* may eventually be overturned, it now impedes employers who want their employees to sign arbitration agreements in the state. Employers in Kentucky may want to consider whether having employees sign arbitration agreements currently makes sense. Contact your Vorys lawyer if you have questions about implementing mandatory arbitration agreements.