

Prepare to show applicant understood terms of initial arbitration agreement

Do you routinely include an arbitration agreement in your employment applications?

It's a good idea to keep copies of both, in case the employee later claims she didn't understand what she was signing because of language barriers. The application she filled out in English likely will counter that claim.

Recent case: When Gloria applied for a job with LA Fitness as a janitor, she had to sign an arbitration agreement before being considered. It was part of the actual application and was written in English.

She got the job and worked successfully for several years before she was discharged when she refused to accept a shift change.

Then Gloria sued, alleging various forms of discrimination.

The employer asked the court to send the case to arbitration, given that Gloria had signed the arbitration agreement.

But she argued that she had not understood what she was signing because she spoke little or no English and didn't know what the word "arbitration" meant. Gloria also told the court she had only completed seven years of education in Mexico.

The employer had a copy of the completed application, which lists English as a language Gloria speaks. Plus, in her handwriting she had provided detailed information on her language skills, including noting she had taken English classes.

The court said the agreement was binding and that her responses on the application was evidence she had understood she was signing a binding agreement. (*Marmolejo v. Fitness International*, Court of Appeal of California, 2018)