

Remember the final step to make an arbitration agreement stick: Be sure to sign it!

If you want to use arbitration to resolve employment disputes without going to court, you have to make sure you have done everything possible to make that agreement a binding, valid contract.

Something as simple as not signing off on the agreement itself after you ask the employee to sign it can make the entire document invalid and a waste of time, effort and money. That's the lesson an employer recently learned after taking a case all the way to the 5th Circuit Court of Appeals.

Recent case: Kimberly worked as an HR benefits administrator for Ref-Chem, an oil and gas engineering company. She signed an arbitration agreement that said she and the company would resolve any future employment-related disputes through arbitration.

Then she sued Ref-Chem in federal court, alleging she had been the victim of sexual harassment as well as retaliation.

Kimberly filed her lawsuit in late 2016. She alleged that a male co-worker persistently harassed her. According to Kimberly, his conduct including sending her roughly "80 unwanted and offensive emails." She contacted the company's president and asked for a meeting to discuss her concerns. She alleged he refused to meet with her. Kimberly then went to her boss, the head of HR, who promised that her alleged harasser would be contacted and told to stop.

Then, about two months later, Kimberly was fired. Her lawsuit alleged that company representatives told her the reason was that Kimberly was "unhappy" with her job.

Ref-Chem responded to the lawsuit by asking the judge to send the case to arbitration. It told the court that Kimberly had been presented with an arbitration agreement and that she had signed it. That, it argued, bound her to its terms and conditions.

Kimberly argued that the agreement wasn't valid even though she had signed it. She noted that a copy of the agreement she had signed included a signature box for the company, but that no one had ever put a signature in the box. That, her attorneys argued, made the whole thing invalid under basic contract law.

The case ended up in the 5th Circuit Court of Appeals. There, the appeals court carefully reviewed every detail in the agreement. It found that the language stated that both parties were waiving the right to sue one other by entering into the agreement. However, the agreement also said that subsequent modifications wouldn't be binding unless signed by both parties.

The court also noted that the document had not been signed by a Ref-Chem representative.

The court ruled the language, plus the missing employer's signature, meant there was no agreement. The 5th Circuit sent the case back to the trial court, where Kimberly can present her sexual harassment and retaliation claims to a jury in a trial. (*Huckaba v. Ref-Chem*, 5th Cir., 2018)

Advice: If you are considering presenting an arbitration agreement to employees, have an attorney draft the document, paying particular attention to contract law in the jurisdictions where you operate.

Second, make absolutely sure that each and every contract you enter into—including agreements to arbitrate—actually bear a company representative's signature. Don't just collect the document with the worker's signature. Follow up and get a company signature, too.