



## **Sign on the Dotted Line**

*Securing Mandatory Dispute Resolution Processes*

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An employer and employee can agree to submit most job-related disputes, including claims for wrongful discharge and discrimination, to binding arbitration. Some employers view arbitration as a faster, less expensive alternative to court, and prefer to have their case decided by an arbitrator rather than a potentially sympathetic jury. Those employers who prefer arbitration over traditional litigation should be aware of the Sixth Circuit Court of Appeals' recent decision in *Hergenreder v. Bickford Senior Living Group*, 656 F.3d 411 (6th Cir. 2011).

In *Hergenreder*, the Sixth Circuit considered whether an employee gave up her right to a jury trial on her claim for discrimination under the American with Disabilities Act even though she did not sign an agreement consenting to arbitration. The employer, Bickford Senior Living Group, argued that the arbitration language was included in its Dispute Resolutions Procedure ("DRP"), which was referenced in its handbook. Bickford argued that every employee received a copy of its handbook. For her part, the employee argued that she had never seen the DRP, let alone sign a document agreeing to its terms. Importantly, Bickford's handbook, like most, contained a disclaimer that it was not a contract.

The Sixth Circuit held that the employee was not bound by the arbitration language. The court held that there was not an offer and acceptance of the DRP. And while the handbook did reference the DRP, the court held that the handbook itself was not a contract.

The decision in *Hergenreder* makes clear that employers in states in the Sixth Circuit (Michigan, Ohio, Kentucky and Tennessee), who want to force employees to arbitrate employment disputes and waive their right to a jury trial, need to have employees sign a document that states they will submit all claims to arbitration. A handbook that mentions arbitration is likely not enough. There must be some evidence that the employee knew of the limitation and willingly accepted it.