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Greetings to my valued connections!

Another byte of law for your interest. Topic: Adhesion Contracts

Contracts of Adhesion are also referred to as Unconscionable Contracts. They can occur in any area of law, but, are often litigated in employment law settings. While this Legal Byte is meant as a general discussion, the source material is based on an employment agreement containing an arbitration clause.

Usually, but not always, a contract of adhesion is a standardized contract, drafted by the party in a position of superior bargaining strength, which is imposed on the other party giving the weaker party only the opportunity to accept or reject the contract with no modifications.

Once the court finds that an agreement is a contract of adhesion, the court's next inquiry is to determine if it is enforceable. Contracts of adhesion are not unenforceable as a matter of law.

In general there are two limitations on enforcing a contract of adhesion or adhesive provision. First, the contract or provision has to be outside the reasonable expectations of the weaker party. Second, even if the contract or provision is within the expectations of the weaker party, it may not be is unduly oppressive or unconscionable. This second element is applicable generally to all contracts. Thus, the 2 elements which determine unconscionability are the reasonable expectations (procedural unconscionability) and oppressive limitations (substantive unconscionability). While both procedural and substantive unconscionability must be present for the court to refuse to enforce a contract, they need not be present to the same degree. A sliding scale is used in California such that if there is much more of one but only a little of the other, the contract will most likely not be enforced.

For a good analysis of this topic please see *Armendariz v. Foundation Health* (2000) 24 Cal.4th 83, 99, 113, CR2d 745 and Cal. Civil Code section 1670.5.

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