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Spanish-Speaking Employees and English Arbitration Agreements

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On April 21, 2014, a California Appellate Court held that an **arbitration agreement** is unconscionable and an employer cannot compel arbitration when the employer failed to translate the entirety of an English-language e**mployment agreement** containing an arbitration agreement, **confidentiality clause,** and enforceability provision for its Spanish-speaking employees.

In ***Esteban H. Carmona et al. v. Lincoln Millennium Car Wash Inc. et al.*** (Case Number B248143, State of California, Second Appellate District, Division Eight), current and former employees Esteban H. Carmona, Marcial H. Carmona, Pedro Cruz, and Yoel Isail Matute Casco sued Lincoln Millennium Car Wash Inc. and Silver Wash Inc. on behalf of themselves and similarly situated employees for alleged wage-and-hour violations. Their employers sought to compel arbitration. The trial court ruled that the arbitration agreement at issue in the case was unconscionable and refused to enforce it, noting that the car wash companies translated only certain parts of the agreement into Spanish and failed to explain it thoroughly.

The employment agreement at issue contained an arbitration clause under the heading "Settlement by Arbitration." It also included a confidentiality clause and an enforceability clause. The arbitration clause and the main confidentiality clause were translated into Spanish but the confidentiality subagreement and the enforceability clauses were not translated.

The court held that the confidentiality clause in the employment agreement was part of the arbitration clause because it required employees to discuss any disputes with management before divulging any information about the car wash companies to "any persons, firms, corporations, media agency, government entities or agencies, [or] other entities." Thus, before going to any attorneys or submitting anything to a trial court or dispute resolution entity such as the American Arbitration Association (AAA), the employees were required to talk to the car wash companies. Additionally, the enforceability clause in the confidentiality subagreement pertained to certain disputes between employee and employer and arbitration rights and was therefore also held to be a part of the arbitration clause. Despite the fact that the clauses were under separate headings in the employment agreement, they were all part of the same employment agreement and were to be read in conjunction to ascertain the entire "arbitration agreement."

The Appellate Court affirmed, holding the enforceability clause of the agreement was one key component hidden from new employees. "The car wash companies hid the enforceability clause and the entire confidentiality subagreement by failing to translate that portion of the agreement into Spanish. The car wash companies evidently knew the plaintiffs required Spanish translations because they provided some translation. The record does not reveal why the car wash companies did not translate the entirety of the employment agreement."

This case is another example of the importance of fully evaluating the language of an arbitration agreement and understanding who makes up the employer's workforce before implementing such an agreement. Employers should be mindful that the enforceability of an arbitration agreement can hinge on whether or not employees understand what they are signing. Employers are advised to provide translations of the entirety of their arbitration agreements, not just select provisions, to employees who cannot speak and/or read English.