



Waiver of Employees' Right to Sue Declared Invalid

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Two married paramedics may proceed in federal court with each of their separate employment disputes against a non-profit ambulance company based in Ann Arbor, Michigan, despite signing waivers to use a grievance review board as their exclusive remedy.

On April 26, 2010, a federal court of appeals in Cincinnati held the waivers Alan and Kimberly Alonso signed as part of an employment application with Huron Valley Ambulance ("HVA") were invalid because they were not executed knowingly and voluntarily. Although the applications had a provision making employee disputes exclusively subject to review by a Grievance Review Board ("Board"), no information about the Board's procedures was provided to the Alonsos when they signed the agreement. Further, they were never informed of their right to revoke the waivers.

HVA requires prospective employees to sign the applications during their interview process. The waiver provided the prospective employee agrees to waive other forums for resolving disputes arising out of, or in connection with, their employment and that the Board's decisions shall be binding. Alan Alonso signed the application and waiver on July 4, 2005 and his wife did so on July 8, 2005. Both were hired sometime in late July or early August.

In mid-August, 2005, the Alonsos attended HVA's employee orientation during which they received an Operations Policies and Procedures Manual ("Manual") which described HVA's four-step grievance policy. Although the manual did not set forth the Board procedures, it referred employees to another document which set forth those details. Alan and Kimberly Alonso, also separately signed an acknowledgement that they received the Manual on August 16 and 15, 2005, respectively, and that they are responsible for adhering to those policies and procedures.

On February 27, 2008, HVA terminated Alan for violations of HVA's Code of Conduct charging him with lying about his attendance at Army National Guard training and for testing positive for a prescribed drug while at work which altered his mental state. Alonso requested a Board hearing contesting the justification for his termination. After the Board upheld his termination, Alonso filed an action against HVA in federal court alleging wrongful discharge in violation of the Uniformed Services Employment and Reemployment Rights Act, for retaliation for filing an EEOC complaint, and for violation of Michigan state law.



Although Kimberly was not terminated and had not utilized HVA's Board procedures, she also filed an action against HVA alleging it violated the Family and Medical Leave Act when it retaliated against her for taking pregnancy leave, and Michigan state laws for subjecting her to a hostile work environment and other violations. Both Alonsos alleged the waivers in their employment applications were invalid because they were not signed knowingly and voluntarily.

The court of appeals considered several factors to determine if the waivers were signed knowingly and voluntarily: the experience, background and education of the person signing it; the amount of time they had to consider the waiver; whether they had the opportunity to consult with an attorney; the clarity of the waiver; consideration for signing it; and the totality of the circumstances.

In this case, the court of appeals (which reviews federal court cases in Michigan, Ohio, Kentucky and Tennessee) found neither waiver was signed knowingly or voluntarily because the Alonsos were not given any information about the grievance process until almost a month after they signed their waiver. The additional information provided was general and directed them to a website for more detailed information. Further, they were never informed of their right to revoke the waiver.

Providers who utilize waivers for alternative grievance procedures, especially those operating in Michigan, Ohio, Kentucky and Tennessee, should consult with counsel to ensure their waivers provide sufficient detail concerning the grievance process and revocation rights in order to be enforceable.

Alonso v. Huron Valley Ambulance Inc., No. 09-1812, 2010 U.S. App. LEXIS 8592 (6th Cir. Apr. 26, 2010).

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