Calif. Ruling Shows Limits Of Arbitration Pacts With Minors

By **Scott Wenner** (December 11, 2020)

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The hostility of California courts to mandatory arbitration of employment disputes is well chronicled. Indeed, many of the key U.S. Supreme Court precedents mandating enforcement of agreements to arbitrate, or certain of their terms, have been reversals of California courts that refused to enforce those agreements.

Recently, in denying fast food restaurant Del Taco LLC's motion to compel arbitration of an 18-year-old former employee's sexual harassment and other claims, the California Court of Appeal's Fourth Appellate District used a somewhat novel[1] basis for holding an arbitration agreement to be unenforceable.

Background

In Coughenour v. Del Taco,[2] a former employee had signed an arbitration agreement at the start of her employment, when she was just 16 years of age and clearly a minor. She remained employed at Del Taco when she turned 18 — the age of majority in California — and for four months beyond her 18th birthday.

She then quit and several months later filed a lawsuit against Del Taco based on claims that she was sexually harassed and assaulted by a Del Taco employee and was subjected to a hostile working environment, forcing her to resign. She also claimed that Del Taco violated meal break and related obligations imposed by the California Labor Code.

Relying on the signed arbitration agreement, Del Taco moved to compel arbitration of her claims under the Federal Arbitration Act. The employee opposed arbitration using contract principles recognized under California law; the FAA permits the validity of arbitration agreements to be challenged using applicable state contract law.

Among the arguments proposed against enforcement, it was the issue of the employee's capacity to enter into a binding contract — her status as a minor when she signed the arbitration agreement — that convinced both the trial and appellate courts to find the agreement unenforceable. The courts also relied on the terms of a statute not typically relevant to employment matters: the California Family Code.

The Decision

The court of appeal observed that California law does permit a minor to enter into contracts, such as Del Taco's arbitration agreement, in the same manner as adults.[3] However, it noted that this right is subject to an important qualification, referred to as the power of disaffirmance.

Appearing at Family Code Section 6710, under this power "a contract of a minor may be disaffirmed by the minor before majority or within a reasonable time afterwards." The employee argued, among other things, that because she signed the arbitration agreement when she was just 16 years old, she was entitled to disaffirm it, which she did by filing her lawsuit eight months after resigning.

The court agreed with the employee and had little difficulty dismissing Del Taco's two primary objections. Del Taco first contended that the employee ratified her assent to the arbitration agreement by remaining employed for four months after her 18th birthday. Pointing to her testimony that she had no understanding of what the arbitration agreement meant when she signed it without explanation from Del Taco, and had no better understanding after she turned 18, the court dismissed the idea that she could have ratified its terms.

Del Taco's other contention was based on the statutory requirement that an effective disaffirmance may occur before the minor's 18th birthday or a reasonable time afterward. It maintained that by filing a lawsuit eight months after turning 18, the employee failed to disaffirm her agreement to arbitrate within a reasonable time thereafter.

Noting that Family Code Section 6710 does not define that term, the court held that whether disaffirmance occurred a reasonable time after a minor has become 18 is a question of fact necessarily depending on the circumstances of each particular case.

Examining case law concerning contracts disaffirmed outside the employment context, the court rejected Del Taco's argument and held that disaffirmance eight months after the employee's 18th birthday was a reasonable time thereafter. Therefore, it found that the arbitration agreement could not be enforced against the employee as she lacked the capacity to enter into that agreement.

Lessons

Employers in California and likely elsewhere — particularly in the fast food and retail industries where many minors find employment — should not assume that once a minor signs an arbitration agreement he or she cannot go to court. If, as Coughenour suggests, a minor can disaffirm an agreement to arbitrate simply by filing suit before turning 18, that agreement offers little assurance that disputes with minors will be heard before an arbitrator rather than a jury.

Further, even after that minor's 18th birthday it is easy to disaffirm the agreement by filing a lawsuit within eight months or more of that date.

While there is no ready answer that ensures arbitration of a dispute with a minor, Coughenour suggests that with diligence and care, an arbitration agreement initially signed by a minor can be converted into an enforceable agreement on or soon after he or she has turned 18. It may be particularly important to review the agreement with the 18-year-old and respond to any questions to provide a defense to a claim that he or she is too young to have understood what was being signed.

In addition, consideration — i.e., something of value such as a raise in pay or other monetary payment — could be offered in exchange for signing the new arbitration agreement, as at least in California, continued employment generally is considered insufficient consideration for a new agreement.

As a final note, in a separate case brought in the U.S. District Court for the Central District of California under Title VII, Del Taco has reportedly agreed to a consent decree to settle an action alleging sexual harassment, brought by the U.S. Equal Employment Opportunity Commission in Los Angeles on behalf of a class of female current and former employees, including minors.[4]

Del Taco appears to have initially sought to enforce arbitration agreements with class members covering these claims, but its motion on this issue apparently was not decided by the court before the settlement. Thus, although the EEOC action underscores the attention employers must give to preventing sexual harassment, especially against minors, it also can be read as highlighting the lessons of Coughenour about the potential limits of arbitration agreements for minors.

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[1] The novelty was in the use of the employee's contract defense in the context of an arbitration agreement, evidenced by the absence of any citation to arbitration case law to support the court's decision – this absence of citation appears to be accurate.

[2] Coughenour v. Del Taco, LLC , 2020 Cal. App. LEXIS 1106 (4th Dist., Nov. 20, 2020).

[3] Family Code, §6700.

[4] U.S. Equal Employment Opportunity Commission et al. v. Del Taco LLC, Case No. 5:18-cv-01978.