

Missouri Supreme Court Upholds Arbitration Agreement Involving At-Will Employee

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The Missouri Supreme Court has upheld an arbitration agreement signed at the commencement of at-will employment. In doing so, the Court implicitly identified two steps that employers can take to strengthen arbitration agreements in at-will employment relationships.

In *Soars v. Easter Seals Midwest*, an employee sued for wrongful termination, and his employer moved to compel arbitration under a contract the employee had signed when first hired. This motion was unsuccessful until the Missouri Supreme Court granted the employer's motion.

The Court considered previous cases holding that **continued** at-will employment was not valid consideration for a contract, due to "its very moment-by-moment nature." The Court drew a key distinction in the case at hand, where the consideration was **initial** at-will employment: "At the point of hiring, the employer confers the benefit of employment upon the employee, and it is axiomatic that with the benefit of employment comes a bundle of legal rights and expectations to which the employee was not entitled prior to the handshake." Thus, it is now clear that an employer seeking to create an enforceable agreement with an at-will employee may do so by requiring signature at the beginning of the employment relationship.

Another step that employers can take is to give more power to the arbitrator by including a "delegation clause" identical to the one considered in *Soars*. That clause parroted language already approved by the U.S. Supreme Court: "The Arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of this Agreement including, but not limited to, any claim that all or any part of this Agreement is void or voidable."

The Missouri Supreme Court ruled that this language was "clear and unmistakable" evidence of the parties' intent to delegate questions of arbitrability to the arbitrator rather than a court. Because the law treats a delegation provision as a separate agreement, it must be separately and specifically challenged - something the employee in *Soars* failed to do. Thus, inclusion of a delegation clause presents another hurdle for an employee to overcome before he can challenge an arbitration agreement in the civil court system.



Two of the seven judges dissented. The dissenters would have held the entire employment contract - including the arbitration agreement and the delegation clause - invalid due to lack of consideration. At-will employment, they argued, is not valid consideration under any circumstance.

But now, under the majority's ruling upholding the delegation clause and the arbitration agreement, this question will be determined by the arbitrator, who will presumably follow the rule in *Soars* that an initial promise of at-will employment provides consideration sufficient for an enforceable arbitration agreement.