

To: Our Clients and Friends

June 2, 2010

Missouri Court of Appeals Requires Evidence Of “Unequivocal Acceptance” By Employee In Order To Enforce Arbitration Agreement

The Missouri Court of Appeals recently issued an opinion that will affect the enforceability of some arbitration agreements between Missouri employers and their employees. Kunzie v. Jack-in-the-Box, Inc., ED92974 (Mo. App. E.D. Mar. 9, 2010), held that an at-will employee’s continued employment, without more, does not establish acceptance of an arbitration agreement. In so holding, Kunzie rejected federal precedent concluding that mere continued employment can manifest an employee’s acceptance of an arbitration agreement. See Berkeley v. Dillard’s, Inc., 450 F.3d 775 (8th Cir. 2006).

In Kunzie the trial court compelled arbitration of an at-will employee’s discriminatory discharge claims against his former employer because the employee had continued his employment after his employer presented him with an arbitration agreement as a “new condition of employment.” Because the trial court treated the employee’s decision to continue working after receiving the arbitration agreement as evidence of acceptance of an offer to enter an arbitration agreement, the trial court concluded the employee was bound to arbitrate his claims against his former employer without conducting an evidentiary hearing to resolve a dispute over whether the employee had actually signed the agreement. At arbitration, the employee’s claims were denied. The employee moved to set aside the arbitration award, but the trial court denied that motion and dismissed the employee’s petition with prejudice.

The Court of Appeals reversed the trial court, holding that an arbitration agreement cannot be formed between an employer and employee in the absence of “unequivocal acceptance,” which the employee’s continued employment does not provide. Kunzie reasoned that an employee’s continued employment, alone, evinces merely an “intent to maintain the status quo.” Furthermore, the Court distinguished the bilateral arbitration agreement at issue from a unilateral contract, which a party may accept by mere performance. Under Kunzie, explicit acceptance by the employee is necessary to form an employer-employee arbitration agreement that calls for reciprocal promises. In short, employers should not expect a Missouri court to enforce an arbitration agreement against an employee who has

refused to sign it and has not taken some other affirmative act—beyond maintaining the status quo—to communicate acceptance of the agreement.

* * *

Bryan Cave lawyers are ready to provide assistance in designing or reviewing employment policies. Feel free to contact a member of the [Labor and Employment Client Service Group](#) if you have questions about the impact of this matter on your business.