



## STOKES WAGNER

ATTORNEYS AT LAW

ATLANTA • ITHACA • LOS ANGELES • PITTSBURGH • SAN DIEGO • SAN FRANCISCO

### **“Click to Accept” Arbitration: A Cautionary Tale**

A recent federal court decision reminds employers that an employee’s electronic acceptance of an arbitration agreement may not, by itself, be enough to prove that the employee has agreed to arbitrate. In *Shockley v. PrimeLending*, the U.S. Court of Appeals for the Eighth Circuit recently affirmed the lower court’s decision to deny the employer’s motion to compel arbitration where the arbitration agreement was signed via the employer’s automated intranet system.

In order to force an employee to take their dispute to arbitration, there must be an agreement or a contract to arbitrate. The Court focused on whether the employer’s automated intranet system was sufficient proof that she accepted the terms of the arbitration agreement. Ultimately, acceptance via intranet system was insufficient for the following reasons:

- It was unclear that when the employee passively clicked “accept,” she acknowledged and accepted the terms of the arbitration agreement, as opposed to simply acknowledging that she saw the link containing the handbook and arbitration agreement;
- There was no evidence that the employee clicked on the link to review the text of the handbook, so that she may have never seen the arbitration provision;
- If she never saw the arbitration agreement, there was no way she could agree to its terms, which was, as the court stated, a “fatal flaw”;
- The agreement’s delegation clause (delegating the issue of enforceability to the arbitration panel) could not be enforced without proof that the employee agreed to submit the issue of arbitrability to the arbitrator rather than a court.

This decision serves as a reminder that a stand-alone arbitration agreement, rather than a provision within a handbook, is more likely to be upheld. In addition, if your organization onboards new employees electronically, this decision highlights the importance of ensuring that employees are required to review the terms in your arbitration agreement prior to accepting these terms. As the Eighth Circuit stated, there must be a “positive and unambiguous” acceptance by the employee for a court to hold that an arbitration provision is a valid, enforceable contract.