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Can You Stop Non-Union Employees from Suing Your Business?

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No business likes it when a non-union employee or former employee sues the employer. When an employee feels “mistreated,” the employee may sue the employer for discrimination based on age, race, religion, disability, pregnancy, sexual harassment, etc. Other causes of action include lawsuits for wrongful discharge, invasion of privacy, defamation, and other perceived injustices.

Regardless of the reason for the employee lawsuit, responding to the lawsuit is time-consuming, it is expensive (even when the employer wins), and it can be embarrassing. Often employees get subpoenaed to testify and it affects the productivity of the business. Also, if the employee wins the lawsuit, there is the risk of a high jury award for damages.

Michigan employers now have an option to eliminate non-union employee lawsuits with careful legal planning. According to attorney Carl Ver Beek, a Grand Rapids expert on labor law with the firm of Varnum, Riddering, Schmidt & Howlett, “At this point, the law seems sufficiently clear that it is possible to draft a predispute agreement that will bind both the employer and the non-union employee to commit all disputes to final and binding arbitration.”

What the employer must do is enter into a binding legal contract with each employee where both the employer and employee agree to settle any and all employment disputes with the use of binding arbitration. With new employees the signing of this agreement becomes a condition of employment and can be part of the employment application. Strategies to get current employees to accept binding arbitration for employment disputes vary depending on current employment policies and practices. It is best to seek expert legal advice on the best strategy for your business.

For both the employer and the employee there are advantages and disadvantages to binding arbitration.

The advantage to the employer is the elimination of public lawsuits that often invite public inquiry. Binding arbitration is private and the parties often agree to keep any settlement private. Another advantage is that if the employer loses, the neutral arbitrator is likely to award the employee a fair amount compared to a jury award that can be excessive based on the emotion of the jurors.

The advantage to the employee of binding arbitration is that the employee is more likely to get the “injustice” heard. Often employees who wish to sue their employer find that no attorney



wants to take their case since the “grievance” is not large enough to make it worth the attorney’s time and effort. Thus, employees with smaller claims are often effectively precluded from pursuing their claims. With binding arbitration employees can afford to have their claims heard, and attorneys are more likely to represent employees on a contingent fee since the cost and time involved are less than an actual lawsuit.

Another advantage of binding arbitration to employees is that their claim can be heard more quickly than a lawsuit.

One potential disadvantage to employers of using binding arbitration is that the law in this area is relatively new and is based, in part, on a recent court case, *Rembert v Ryan’s Family Steak House* (1999). The court in this particular case established certain requirements and conditions for binding arbitration agreements to be effective in Michigan. An employee could possibly sue the employer and argue that the employer did not follow all the requirements and conditions of *Rembert*, and thus argue that the binding arbitration agreement is not effective. However, with good legal planning, this issue should be minimized.

One potential disadvantage to employees using binding arbitration is that employers are less likely to make a settlement offer. When an employee sues an employer, often the employer will offer a settlement to stop the lawsuit, even when the employer thinks the employer can win the lawsuit. Often the employer knows the lawsuit will cost \$50,000 or more to defend, so it makes good economic sense to settle for something less than the cost of the lawsuit. Also, the employer often wants to avoid the publicity. However, with binding arbitration, there is generally no publicity, it can be less costly, and, thus, the employer may be less inclined to offer a settlement.

In light of the *Rembert* case, it is likely that many Michigan employers will consider the use of binding arbitration for employment disputes. Any business that is interested in eliminating employee lawsuits by the use of binding arbitration should seek expert legal advice to determine if this the best strategy.