

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**VALERIE M. JOHNSON,**

**Respondent,**

**v.**

**VATTEROTT EDUCATIONAL CENTERS, INC.,**

**Appellant.**

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DOCKET NUMBER WD75472

**Date: October 8, 2013**

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Appeal from:  
Jackson County Circuit Court  
The Honorable David M. Byrn, Judge

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Appellate Judges:  
Division One: Mark D. Pfeiffer, P.J., Victor C. Howard and Alok Ahuja, JJ.

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Attorneys:  
Michael A. Williams and Thomas J. Hershewe, Kansas City, MO, for appellant.  
Christopher M. Sanders, Clayton, MO and Whitney P. Cooney, St. Louis, MO, for respondent.

**MISSOURI APPELLATE COURT OPINION SUMMARY**  
**COURT OF APPEALS -- WESTERN DISTRICT**

**VALERIE M. JOHNSON**

**Respondent,**

**v.**

**VATTEROTT EDUCATIONAL CENTERS, INC.,**

**Appellant.**

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Appellant Vatterott Educational Centers, Inc., hired Respondent Valerie Johnson to serve as the Director of Admissions at its Kansas City campus in June of 2009. On March 15, 2010, Vatterott gave Johnson an Employee Handbook. The Employee Handbook contained a section titled “At Will Employment and Binding Arbitration Agreement” (“Arbitration Agreement”). This section was signed by Johnson and by Vatterott’s Director of Human Resources. One copy of the signed Arbitration Agreement was removed from the Employee Handbook and placed in Johnson’s personnel file.

Vatterott terminated Johnson’s employment in March 2011. Johnson sued Vatterott for employment discrimination. Vatterott moved to compel arbitration, which the circuit court denied. Vatterott appeals.

**AFFIRMED.**

Division One holds:

In deciding a motion to compel arbitration, whether the parties entered into an enforceable arbitration agreement is a preliminary issue for the court to decide, applying Missouri law. Under Missouri law, a valid contract must be based upon offer, acceptance, and bargained for consideration. Employee handbooks generally are not considered contracts because they normally lack the traditional prerequisites of a contract. Despite this general rule, an arbitration agreement contained within an employee handbook may constitute an enforceable agreement where the employer and employee unambiguously agree that binding arbitration will constitute the employee’s exclusive remedy for employment-related disputes.

The Arbitration Agreement which Vatterott seeks to enforce contains provisions stating that it constitutes a binding and enforceable contract. The Arbitration Agreement plainly constituted part of Vatterott’s Employee Handbook, however. And while the Arbitration Agreement itself states that it is a binding and enforceable contract, the Handbook provisions

which surround it state in equally clear and explicit terms that nothing in the Handbook is contractual, and that everything in the Handbook is subject to change by Vatterott at any time, in its sole discretion.

Given this ambiguity between the provisions of the Arbitration Agreement, and the provisions of the Employee Handbook of which the Agreement is a part, we cannot find that Vatterott offered Johnson a binding and enforceable arbitration agreement with the definiteness and clarity required to supersede the general rule that employee handbooks do not give rise to contractual rights. The ambiguities as to the contractual status of the Arbitration Agreement must be construed against Vatterott, the Agreement's drafter. Given the Handbook's admonitions that its contents were unilaterally modifiable by Vatterott, and constituted mere guidelines, the Arbitration Agreement was not a contractual offer which became binding on Johnson upon her acceptance of it.

Before: Division One: Mark D. Pfeiffer, P.J., Victor C. Howard and Alok Ahuja, JJ.

Opinion by: Alok Ahuja, Judge

**October 8, 2013**

**THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.**