

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KIANNA HAWKINS, COURTNEY)
JOHNSON, ALYSE NEWHOUSE,)
KRISTY CASTRO, ALICIA RODRIGO,)
CIARA LEVENBERRY, ARIEL)
MILLER, JEWELS KERUREDY, TYRIA)
STONA, BIANCA FEBUS, CHANT'L)
MARTIN, NICKOMIE GARCIA, and)
FANTA SILAH,)

Plaintiffs,)

v.)

HOOTERS OF AMERICA, INC. and)
HOOTERS OF WASHINGTON, D.C.,)
LLC,)

Defendants.)

DECLARATION OF PATRICIA KELLNER

COMES NOW Patricia Kellner and, in accordance with 28 U.S.C. § 1746, hereby declares as follows:

1.

My name is Patricia Kellner. My business mailing address is 1815 The Exchange, Atlanta, Georgia 30339. I am over the age of 21. I am competent in all respects to testify regarding the matters set forth herein. I have personal knowledge of the facts stated in this Declaration and know them to be true. I understand that this Declaration is to be used in connection with the above-referenced civil action, and I give it freely for that purpose.

2.

I am currently the Director of Human Resources for Hooters of America, Inc. (HOA) and am familiar with Hooters of Washington, D.C., LLC. HOA and Hooters of Washington, DC, LLC

(collectively hereinafter, "Hooters") are in the business of, among other things, operating entertainment facilities under the tradename "Hooters"®. HOA is a Georgia corporation with its principal place of business in Atlanta, Georgia. HOA, among other things, leases employees to Hooters-branded entities in the States of Maryland and South Carolina and the District of Columbia. At all times relevant, Plaintiffs were employed by HOA. Hooters of Washington, DC, LLC is also a Georgia Limited Liability Company whose sole Member/Manager is HOA. Hooters of Washington, D.C., LLC operates a location in the District of Columbia.

3.

As the Director of Human Resources, I am familiar with HOA's employment policies, including its Open Door policy and arbitration program. HOA has in place a progressive "Open Door" policy that is designed to permit fast, early intervention in employee problems of any kind or type at the store level through a free flow of information from rank-and-file employees to management. Since adoption of this policy, HOA employees have been able to informally resolve many complaints that might otherwise have grown into litigation or arbitration.

4.

In early 1994, HOA supplemented its highly successful internal dispute resolution procedures with an arbitration program designed to give employees an additional forum for resolving issues identified through the Open Door policy or otherwise. The arbitration program has developed into what is currently encapsulated in the Hooters of America, Inc. Arbitration Agreement (the "Agreement"). Although HOA still encourages the informal resolution of employment disputes through its other policies, unresolved issues are subject to binding arbitration pursuant to the terms set forth in the Agreement, which employees are required to sign and agree to as a condition of employment.

5.

Each applicant for employment, including each of the named Plaintiffs in this action, is informed of HOA's arbitration program through a notice at the top of the application for employment, which notice provides:

NOTICE TO APPLICANTS:

YOUR APPLICATION WILL BE CONSIDERED ONLY AFTER YOU HAVE AGREED TO ARBITRATION. YOU MAY OBTAIN A COPY OF THIS AGREEMENT AND THE ARBITRATION RULES ON REQUEST. YOU MAY TAKE AS MUCH TIME AS YOU LIKE TO REVIEW THIS AGREEMENT. YOU ARE ENCOURAGED TO SEEK LEGAL ADVICE BEFORE SIGNING THE AGREEMENT TO ARBITRATE.

6.

True and correct copies of the Agreements signed by Plaintiffs are attached hereto collectively as Exhibit A and are incorporated herein by reference. A true and correct copy of the current version of the American Arbitration Association's National Rules for the Resolution of Employment Disputes, as referred to in the Agreement, is attached hereto as Exhibit B.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 25th day of August, 2009.



Patricia Kellner

HOOTERS OF AMERICA, INC.'S AGREEMENT TO ARBITRATE

This Agreement requires you to arbitrate any legal dispute with the Company, which means Hooters of America, Inc. and its subsidiaries (including but not limited to all Hooters® restaurants owned or operated by Hooters of America, Inc.), and their current and former employees, officers, and agents in their capacity as such or otherwise. The Company will not consider your application unless this Agreement is signed. This Agreement to arbitrate affects your rights to a trial by a jury. You may wish to seek legal advice before signing this Agreement to arbitrate.

Section 1: Duty to Arbitrate

By signing this Agreement, you and the Company each agree that all Claims between you and the Company will be exclusively decided by arbitration governed by the Federal Arbitration Act before one NEUTRAL ARBITRATOR AND NOT BY A COURT OR A JURY. In all cases, such arbitration shall be conducted under the most current version of the American Arbitration Association's National Rules for the Resolution of Employment Disputes ("AAA Rules"), and/or such other procedures as the parties both agree in writing. The NEUTRAL ARBITRATOR shall be selected through the American Arbitration Association, unless otherwise agreed to by the parties in writing.

As used in this Agreement, "Claims" means all disputes between you and the Company, including but not limited to disputes arising out of or related to your application for employment, your employment by the Company, or your separation from employment with the Company (including any job-related post-separation disputes) and includes any such disputes with current or former supervisors, co-employees, officers, and other employees or agents of the Company, in their capacity as such and otherwise. The term "Claims" includes, but is not limited to, any claim whether arising under federal, state, or local law, under a statute such as Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and/or the Americans with Disabilities Act, under a rule, under a regulation or under the common law, including, but not limited to any claim of discrimination, sexual harassment, retaliation, defamation, or wrongful discharge. As used in this Agreement, "Claims" does not mean disputes related to workers' compensation claims or health benefits, or an assertion that the Company's practice of hiring only females for the position of "Hooters Girl" is illegal and/or must be altered. These matters are not subject to arbitration under this Agreement.

The term "Claims" includes claims in equity. However, any party may seek interim equitable relief from a court of competent jurisdiction in order to maintain the status quo of any particular matter.

The terms of this Agreement control over any prior arbitration agreements you may have signed with the Company and any prior discussion you may have had with a Company representative about arbitration.

Section 2: Arbitrator's Authority

No Arbitrator shall have the power to alter the at-will status of any employee or to impose any limit on the Company's discretion to discipline or discharge any employee, except as otherwise provided by law. This Agreement shall not be construed to deprive a party of a substantive right preserved by law. To the extent possible, the Arbitrator will refer to and use the Federal Rules of Evidence and Federal Rules of Civil Procedure on issues not specifically covered by the AAA Rules.

Section 3: Starting Arbitration

Either party to this Agreement may initiate arbitration by delivering a written request to arbitrate to the American Arbitration Association, listing the Claim(s) to be arbitrated. A copy of the written request must also be served on the other party by hand delivery or by certified mail. Requests to the Company shall be sent to Hooters of America, Inc.'s Office of General Counsel at 1815 The Exchange, Atlanta, Georgia 30339. Requests to you shall be delivered to your legal counsel, if known, or to your last known home address on file with the Company. Either party may notify the other party of a change of address by sending the other party written notification by hand delivery or certified mail.

Section 4: Time Limits for Initiating a Claim

For those causes of action where a charge or complaint filed with a government agency is a necessary prerequisite to filing a lawsuit, such filing prerequisite is hereby waived and a claim shall be processed so long as that claim is filed with the American Arbitration Association and served on the other party as set forth below within the time limits established by law for the filing of such charge or complaint with a government agency in the appropriate geographic jurisdiction. Except as modified in this Section, the time limits for initiating a Claim shall be the time limits provided in law for the specific legal claim, dispute or cause of action brought by an employee against the Company.

Section 5: Dispositive Motions

Either party shall have the right to file a dispositive motion with the Arbitrator, including a motion to dismiss and a motion for summary judgment. These motions shall be heard and ruled upon by the Arbitrator at least sixty (60) days prior to any hearing on the claims being held.

Section 6: Appeals

Either party may bring an action in any court of competent jurisdiction to enforce an arbitration award. A party opposing enforcement of an award may bring a separate action in any court of competent jurisdiction to set aside the award, where the standard of review will be the same as that applied by an appellate court reviewing a decision of a trial court sitting without a jury.

Section 7: Supersedes Any Prior Agreement

This Agreement shall supersede any and all prior arbitration agreements that may have been entered into by the parties.

I have carefully read this Agreement and I knowingly and voluntarily sign this Agreement and acknowledge that I have been given the opportunity to consult an attorney before signing. I acknowledge that this Agreement contains the entire agreement between myself and the Company regarding arbitration, and that I have not relied upon any additional terms or statements by any manager, employee, or agent of the Company in deciding to sign this Agreement.

C. Kolbenz
Your Signature
Chia Leventy
Your Printed Name

5-4-09
Date of Your Signature
[REDACTED] 9813
Your Social Security Number

This Agreement has already been agreed to by the CEO/President of Hooters of America, Inc., and its subsidiaries.

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NOTE: If you fail to sign this Agreement, your continued employment with Hooters of America, Inc. establishes your agreement to the terms of this Agreement.

NOTICE TO APPLICANTS

IN ORDER TO BE EMPLOYED BY HOOTERS OF AMERICA, INC. OR ITS SUBSIDIARIES, YOU WILL BE REQUIRED TO EXECUTE THE HOOTERS OF AMERICA, INC. AGREEMENT TO ARBITRATE. ARBITRATION WILL BE CONDUCTED IN ACCORDANCE WITH THE AMERICAN ARBITRATION ASSOCIATION'S NATIONAL RULES FOR THE RESOLUTION OF EMPLOYMENT DISPUTES.

IF YOU WANT A COPY OF THE AMERICAN ARBITRATION ASSOCIATION'S NATIONAL RULES FOR THE RESOLUTION OF EMPLOYMENT DISPUTES, A COPY WILL BE PROVIDED TO YOU, AT NO CHARGE, UPON REQUEST OF THE GENERAL MANAGER OF THE LOCATION AT WHICH YOU ARE APPLYING.

PLEASE NOTE THAT THE AMERICAN ARBITRATION ASSOCIATION MAY REVISE ITS NATIONAL RULES FOR THE RESOLUTION OF EMPLOYMENT DISPUTES, THEREFORE IT IS YOUR RESPONSIBILITY TO INSURE THAT YOU HAVE OBTAINED THE MOST CURRENT VERSION OF THE NATIONAL RULES FOR THE RESOLUTION OF EMPLOYMENT DISPUTES.

You can obtain the most current version of the American Arbitration Association's National Rules for the Resolution of Employment Disputes or information regarding the American Arbitration Association at the following addresses:

America Arbitration Association
Corporate Headquarters
335 Madison Avenue, 10th floor
New York, New York 10017-4605
Phone: 212-716-5800
Fax: 212-716-5905
800-778-7879 Customer Service

Website: WWW.ADR.ORG

Email: CustomerService@adr.org