

**Federal Court Report**  
  
**Arbitration Agreement Forecloses Litigation of Discrimination Claims**

1/18/2022

By [W. Kevin Smith](mailto:wks@smithandsmithattorneys.com) and [Jacob W. Crouse](mailto:wks@smithandsmithattorneys.com) - Smith and Smith Attorneys  
*A member of* [*Worklaw® Network*](http://www.worklaw.com)  
  
An employer was entitled to compel an employee to arbitrate his claims of discrimination based on his race and national origin, as a valid agreement to arbitrate employment-related disputes existed, ruled the 5th U.S. Circuit Court of Appeals.

The plaintiff was a long-term employee of Charter Communications. In 2017, the company established a new employment-based legal dispute resolution program. Employees were made aware, via e-mail, that they would automatically be enrolled in the program if they did not actively opt out within 30 days. The notice e-mail provided links to additional information regarding the program and instructions on how an employee could opt out. The plaintiff did not opt out.

Subsequent to the notice e-mail being issued and the opt-out period ending, the plaintiff alleged that he was discriminated against based on his race and national origin during his employment.

The plaintiff subsequently filed suit in the U.S. District Court for the Northern District of Texas, alleging violations of Title VII of the Civil Rights Act of 1964. Charter Communications moved to compel arbitration of those claims and to dismiss the complaint, as the plaintiff had agreed to arbitrate such disputes as part of the program. Based on evidence entered into the record that the plaintiff had received the notice e-mail regarding the program and that he did not opt out, the district court granted the motion to compel and dismissed the complaint.

On appeal, the 5th Circuit concluded that the employer had demonstrated that the plaintiff had both received notice of the program and accepted mandatory arbitration of employment-related disputes as a modification to the terms of his employment. As such, a valid agreement to arbitrate existed.

The 5th Circuit further found that the plaintiff did not assert on appeal that his particular claims of discrimination were not covered by the terms of the arbitration agreement.

Accordingly, the 5th Circuit upheld the district court's decision.

*Gezu v. Charter Communications*, 5th Cir., No. 21-10198 (Nov. 2, 2021).

**Professional Pointer:** Notice and record keeping are important objectives any time an employer implements a new policy or otherwise modifies the terms and conditions of employment for its employees. By documenting an employee's receipt and acceptance of a new policy or program, an employer can forestall subsequent arguments that an employee was either not aware of the program or policy or that the program or policy should not apply to the employee. It also is important to note that enforceability of arbitration agreements is dependent on both the type of claim being asserted and the laws of the state in which the arbitration agreement is intended to be enforced.

*W. Kevin Smith and Jacob W. Crouse are attorneys with* [*Smith and Smith Attorneys*](https://worklaw.com/firms/smith-smith-attorneys)*, the Worklaw® Network member firm in Louisville, Ky.*