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What Happens When an Arbitration Agreement Is Illegible?

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The California Supreme Court heard arguments earlier this week on whether an arbitration agreement that is illegible is enforceable. The case raises interesting, if esoteric, legal questions about what constitutes the meeting of the minds sufficient to form a contract, but the practical issues it raises are more basic. The challenge to this agreement never arises if the employer had presented the employee with a legible agreement in the first place. In this case, the employer used a form arbitration agreement that had apparently been photocopied so many times that it had become blurry.

If your company's arbitration agreement has become blurred from years of copying and re-copying, that's a pretty good sign that it needs some TLC. The law on employment arbitration changes frequently, and employers should check at least annually to make sure that their arbitration agreement complies with current law. Employers also need to keep an eye on their onboarding process to make sure that it is sound. Employees should be encouraged to read the arbitration agreement and ask questions if they have them, and if an employee asks to speak with an attorney about it, the employer should give them a reasonable opportunity to do that. It is very important to remind supervisors not to pressure employees to sign the agreement or to rush through it. And it is always a good idea to engage the assistance of experienced counsel who are up-to-date on the state of the law on arbitration agreements. Implementing a sound arbitration policy can be a time-consuming and expensive process, but the consequence of not keeping the agreement well maintained is often losing the arbitral forum and all of its benefits.