

Courts Continue To Uphold Arbitration Agreements

Employers who have had the unfortunate experience of defending employment litigation know how costly it can be. Mandatory arbitration programs offer a number of unique advantages for employers regardless of whether they have had significant litigation exposure in the past. In recent years, courts have repeatedly upheld and enforced properly drafted and properly implemented arbitration agreements, preventing employees from having their claims of discrimination, wrongful discharge, decided in a court. What was once seen as having a risky chance of enforceability, has now become a larger accepted practice.

Employees waive their right to bring future claims before a judge and jury. Instead, they agree that any claim must be resolved through arbitration where the arbitrator's decision will be final and binding, subject to very limited court review. As compared to jurors, or even judges, over whom the employer has little control in selecting, arbitrators can be selected by the parties. Good arbitrators are knowledgeable and sensitive to business concerns and employment issues and understand legal concepts. With juries, it is uncertain whether the individuals will understand the law, the facts or care about business concerns. Claims are normally resolved in a short time frame compared to the typical court case that can hang over a company for years, disrupting the business. In addition, arbitrations are private proceedings; they are not held in a public arena, thereby reducing unwanted negative publicity for the employer. The arbitration process also generally results in reduced legal fees and costs as discovery and other pre-trial activities are reduced. Sometimes lawyers representing employees do not pursue claims when faced with arbitration instead of a judge and jury. Most importantly, employers avoid wild jury verdicts. Arbitrators tend to award damages more tailored to the actual harm proven and are more adverse to awarding huge punitive damage remedies, which often account for the large, multi-million dollar jury verdicts which are so widely publicized.

Arbitration programs must be carefully drafted to fully take advantage of the benefits available. We would be pleased to assist any employer interested in developing such a program.

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