

Enforceability of and Alternatives to Mandatory Arbitration Agreements in the Workplace

Responding to rising litigation costs and reports of astronomical jury verdicts, many employers have turned to arbitration, hoping to avoid litigating employment disputes in court. Their reasoning is simple: arbitration proceedings are perceived as less costly and less uncertain than jury trials. However, arbitration agreements must be carefully and thoughtfully drafted. Additionally, mandatory arbitration may not always be the right answer.

After years of uncertainty, the Supreme Court unambiguously endorsed the validity of arbitration provisions in *Circuit City Stores v. Adams*. The United States Court of Appeals for the Fourth Circuit followed suit in *Adkins v. Labor Ready, Inc.* Even the federal appellate court in California - one of the last holdouts - has finally decided that the Civil Rights Act of 1991 does not preclude enforcement of mandatory arbitration of Title VII claims. Still, many courts seem troubled by the adhesive nature of such agreements and seize any opportunity to free employees from the perceived constraints of arbitration.

Courts routinely invalidate agreements that give employers unilateral control over the pool of arbitrators, require employees to give up substantive rights (such as having the EEOC bring a claim on an employee's behalf), shorten limitation periods, limit the type of relief or amount of damages provided in employment laws, require the loser to pay the arbitration costs and expenses, require employees to bear more than a nominal cost to arbitrate or reserve employers' rights to unilaterally modify the agreement.

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