



## U.S. Supreme Court Validates Arbitration of Employee Claims

The U.S. Supreme Court recently ruled in *Circuit City Stores, Inc. v. Saint Clair Adams* that arbitration clauses in employment applications or contracts are enforceable. This decision means that, at least for now, employers who use well-drafted arbitration agreements can have virtually any employment disputes – including claims of age, sex or race discrimination, or sexual harassment – settled in arbitration rather than in court, which can often save time and money.

### THE DECISION

Saint Clair Adams sought a position as a salesperson at a Circuit City store in California and signed an employment application in which he agreed to “settle any and all previously unasserted claims, disputes or controversies arising out of or relating to my application or candidacy for employment, employment and/or cessation of employment with Circuit City, *exclusively* by final and binding arbitration before a neutral Arbitrator.” Adams was hired. Two years later, he filed an employment discrimination suit against Circuit City in a California state court.

Circuit City sought to enjoin the state court action and compel Adams to arbitrate pursuant to the employment application. The Court ruled that the Federal Arbitration Act (“FAA”) applied, holding that the FAA covers all contracts of employment except those of transportation workers. As a result, Adams was required to submit his dispute to final and binding arbitration.

**Note:** The Circuit City decision is controversial and has prompted discussions in Congress about amending the FAA. In addition, the Supreme Court will soon hear another case to decide the role of the EEOC in seeking relief on behalf of employees who are covered by arbitration agreements. A decision in this case is expected later this year. We will discuss any developments in a future newsletter.

### DUE PROCESS

When an employee is asked to agree to mandatory arbitration as a condition of getting or keeping a job, a court normally will scrutinize the arbitration process carefully to make sure it is fair. Thus, before employers decide to require mandatory arbitration, they should think

carefully about how to structure an arbitration process that courts will uphold.

One common criticism of mandatory arbitration is that it can be too one-sided in favor of the employer and deprive an employee of procedural due process rights, such as a jury trial, that the employee could have obtained in court. Any mandatory arbitration program should address issues such as the selection of an arbitrator or panel of arbitrators, the sharing of costs, the parties’ rights of appeal and the rules governing the hearing in a fair and equitable manner.

### ADVANTAGES OF ARBITRATION

- Often faster and less costly than traditional lawsuits
- Less risk of bias or emotion than in jury trials
- Potentially lower damage awards
- Cases decided by experienced, neutral arbitrators

### DISADVANTAGES OF ARBITRATION

- Limited appeal rights; decisions are usually final.
- Higher likelihood that employee will receive *some* award, though typically less than a jury would award.
- May encourage more employee complaints because of lower cost for them as well as for the employer.

### RECOMMENDATIONS FOR EMPLOYERS

- Decide if the company wants mandatory arbitration of employment-related disputes.
- Check existing application forms, contracts and employee handbooks to determine if mandatory arbitration provisions already are in place.
- Review any existing arbitration provisions, or draft new ones, being careful to develop a program that is fair and will withstand any due process challenges.

If you have any questions or would like assistance in reviewing company employment applications, agreements or handbooks or in drafting appropriate mandatory arbitration provisions, please contact **Dorit Heimer** or **Pat Weitzman** of our office at **203-222-0885**.

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