Supreme Court Upholds Private Arbitration of Employment Disputes

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The U.S. Supreme Court has made it easier for employers to resolve workplace disputes through the use of arbitration procedures rather than the courts. Ruling March 21st that employment agreements containing arbitration provisions are enforceable under federal law, the Supreme Court settled conflicting opinions among the lower courts as to whether employers could require employees to submit disputes to arbitration rather than file lawsuits. The decision gives broad protection to arbitration agreements under the Federal Arbitration Act and provides employers with good reasons to consider instituting mandatory arbitration programs. Employers now have a reliable alternative to courtroom litigation as a means to redress employee complaints. [Circuit City Stores, Inc. v. Adams, 532 U.S. - (2001).]

On behalf of the Society for Human Resource Management, Jackson Lewis filed one of the "friend of the court" briefs, which helped convince a majority of the justices to rule in favor of arbitration. In an unusual gesture, the Court specifically referred to these briefs in its decision.

The Facts Before the Court
The plaintiff worked as a sales counselor for the employer in one of its California retail stores. When hired, he was required to sign an employment application that contained the following provision:

I agree that I will settle any and all previously unasserted claims, disputes or controversies arising out of or relating to my application or candidacy for employment and/or cessation of employment with Circuit City exclusively by final and binding arbitration before a neutral Arbitrator. . . .

Two years after he was hired, the plaintiff filed a civil complaint in California state court against the employer alleging discrimination under the California Fair Employment and Housing Act, among other claims. In response, the employer sought to enforce the arbitration agreement in a California federal court under the Federal Arbitration Act. The federal trial court ordered arbitration, however, the U. S. Court of Appeals for the Ninth Circuit reversed the lower court’s decision and found the FAA did not apply to employment contracts. The employer then appealed to the U. S. Supreme Court.

The Supreme Court decided the FAA indeed applies to all employment contracts, except those relating to employees working in interstate transportation, such as seamen and railroad employees. Since the plaintiff was not involved in transportation, the Court ruled the FAA applied and the arbitration agreement he entered into was valid and enforceable.

The Effect of the Supreme Court’s Decision
While the Supreme Court left open many questions about mandatory arbitration of workplace disputes, the Circuit City case certainly enhances the enforceability of agreements to arbitrate between employers and employees. Under the FAA, enforcement of agreements is streamlined and awards are confirmed. Additionally, the FAA authorizes a court to suspend a lawsuit when an issue in the case is subject to arbitration. Finally, and perhaps most importantly, the FAA preempts state laws aimed at limiting or restricting arbitration agreements. For example, the Supreme Court previously has ruled that the FAA preempted a Montana law requiring arbitration clauses in contracts to appear on the first page of the agreement and in underlined capital letters.

The Circuit City decision does not guarantee the enforceability of all pre-dispute arbitration agreements. Until there is further clarification of the decision, there is room for exceptions depending upon the way the arbitration agreement is drafted and the process is handled. Furthermore, in states...
under the jurisdiction of the Ninth Circuit, discrimination claims under Title VII of the Civil Rights Act of 1964 still may be exempt. Also, the FAA expressly provides that arbitration agreements must be subject to the same defenses as other contracts and may be voided based on unconscionability, fraud, and duress.

What Employers Should Do Now

"Employers now should be evaluating the pros and cons of arbitration to decide whether it is right for their workplace," says David Block, the Jackson Lewis partner who drafted the SHRM amicus brief. Mr. Block lists the following among the points favoring arbitration over courtroom litigation:

- disputes may be resolved more quickly and efficiently
- proceeding through arbitration is generally less costly
- arbitrators are believed to be "expert" decision-makers bringing specific knowledge and experience to the table, as opposed to lay jurors
- arbitration may provide a "user friendly" vehicle for both employee and employer
- arbitration may provide a system that insures fairness and due process

Among the concerns an employer may have about arbitration, Mr. Block lists:

- a fear of proliferation of employee disputes
- the difficulty of overturning an arbitrator's unfavorable decision
- a tendency among arbitrators to "split the baby" to resolve the dispute
- inclusion of evidence that normally would be excluded from a court proceeding

Although the Supreme Court now has said arbitration agreements are enforceable, it did not address the practical issues regarding implementation. Mr. Block cautions that employers must make certain their arbitration provisions are carefully drafted.

"That's going to be the next issue," Mr. Block told the New York Times in a March 22 interview on the case. "Employers wishing to construct these agreements must be very careful in how they draft them, because the lower courts have been deeply troubled by arbitration processes that are one-sided. The Supreme Court didn't address the details."

Editor's Note: Jackson Lewis was among the first law firms to advise clients on arbitration and other alternative dispute resolution mechanisms as a means of resolving workplace disputes.