

Client Advisory

April 2001

Supreme Court Clears Way for Arbitration of Employment Disputes

On March 21, 2001, the Supreme Court endorsed judicial enforcement of arbitration agreements between employers and employees. This decision, *Circuit City Stores, Inc. v. Adams*, paves the way for employers to enter into pre-dispute arbitration agreements with their workforce and thereby avoid costly litigation and jury awards.

The Supreme Court's Decision

In October 1995, Adams applied for a job with Circuit City in California. Adams signed an employment application that included a provision in which each applicant agreed to settle any disputes relating to his "candidacy of employment, employment and/or cessation of employment with Circuit City, exclusively by final and binding arbitration before a neutral Arbitrator."

Two years later, Adams sued Circuit City, claiming employment discrimination. Circuit City sought to enjoin the suit and compel arbitration based on the employment application. The U.S. Court of Appeals for the Ninth Circuit held that the Federal Arbitration Act (FAA), which compels judicial enforcement of written arbitration agreements, did not apply to employment contracts. Thus, the court reasoned, Adams could proceed with his lawsuit.

The Supreme Court reversed the appellate court, holding that the FAA covered all employment contracts except those of transportation workers. The Court recognized that arbitration agreements benefitted both parties by allowing them to avoid the considerable costs of litigation. The Court also noted that, if properly drafted, such agreements would not affect employees' substantive statutory rights but would merely change the forum for resolving disputes.

Implications of the Decision

The *Circuit City* decision eases the way for employers to enter into broad pre-dispute arbitration agreements. Before the decision, judicial support for such agreements in the employment context was mixed. With the Supreme Court's endorsement of such agreements as enforceable and even desirable, however, more employers are likely to begin using them.

Pre-dispute arbitration agreements require both employers and employees to submit to arbitration nearly all claims arising out of the employment relationship, including statutory discrimination claims and common law breach of contract claims. The use of arbitration, rather than litigation, tends to speed

resolution of claims, streamline discovery, decrease attorneys' fees, and reduce any damages awarded to an employee who prevails.

Even in the wake of *Circuit City*, however, employers must take care in how they draft and introduce arbitration agreements to their workplace. To pass legal muster, employers must ensure that the arbitration agreements contain sufficient due process protections; that they are mutual; that they carve out certain claims, such as workers' compensation, that are not appropriate for arbitration; and that they do not limit an employee's statutory remedies. Employers who wish to require existing employees to sign such agreements must also carefully consider whether they intend to terminate employees who refuse to sign.

If you have any questions about the use of pre-dispute arbitration agreements, or if you are interested in developing an arbitration agreement for your workplace, please contact a member of Katten Muchin Zavis Rosenman's Labor and Employment Practice.

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