

## **U.S. Supreme Court Considers Mandatory Arbitration Clauses in Employment**

### **Agreements**

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Mandatory arbitration has served for many years as an alternative to lawsuits to resolve various types of employment disputes including claims of discrimination. An employer may prefer arbitration because it is viewed as quicker and cheaper than going to court. However, arbitration has been questioned for being unfair to employees since mandatory arbitration provisions deny the employee their right to proceed in court. Often, the signing of an employment agreement containing an arbitration clause is a condition of employment. Recently, the United States Supreme Court held so long as an arbitration agreement delegates the decision regarding unfairness to the arbitrator, it should be the arbitrator rather than the court who decides whether an arbitration clause is enforceable. In *Rent-A-Center, West, Inc. v. Jackson* (No. 09-497), the Supreme Court considered whether a black employee who filed a racial-discrimination claim against the company after he left his job was forced to have his discrimination case arbitrated. Rent-A-Center moved to have his complaint dismissed because he agreed to submit job disputes, including discrimination claims, to arbitration as part of his employment agreement. The employment contract also provided that any question of whether the arbitration was enforceable would be decided by an arbitrator instead of a judge. Mandatory arbitration provisions in the employment area have been challenged as fundamentally unfair or unconscionable. At issue before the Supreme Court was whether the judge or the arbitrator has the authority to decide whether a mandatory arbitration agreement is unconscionable. In a 5-to-4 decision, the Court sided with the employer. Critics argue that by siding with the employer, the Court removed an important check on the arbitration system, especially in the use of one-sided arbitration clauses since if an agreement to arbitrate is unfair, the arbitrator should not decide that question since as a result of their training and vocation arbitrators have a tendency to believe that arbitration is inherently fair. In light of the decision it is expected that more employers will rewrite their arbitration clauses to include similar provisions. For additional employment information, please visit our web site at <http://www.joettedoran.com>

*\*This article is not intended as legal advice. You should consult with an attorney for individual advice regarding your own situation.*

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