

**MANDATORY ARBITRATION PROVISIONS IN EMPLOYMENT
AGREEMENTS ARE ENFORCEABLE**

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On March 21, 2001, the United States Supreme Court issued a 5-4 decision upholding the enforceability of arbitration agreements specifically in the employment context and in the commercial context in general. The case concerned the applicability of the Federal Arbitration Act, the federal law permitting the enforcement of arbitration agreements in commercial contracts, to employment agreements. In the case, Circuit City Stores v. Adams, the Court held that with the exception of transportation workers, arbitration agreements in employment contracts are enforceable under federal law.

Under the Supreme Court's decision, an agreement to arbitrate by an employee does not constitute a waiver of his/her right to bring any particular cause of action, but rather requires that the employee bring such causes of action, including those claims premised on federal or state statute, such as allegations of wrongful termination and/or discrimination, before a neutral arbitrator. This decision continues the Supreme Court's line of decisions, which hold that when a statutory cause of action does not require a particular forum in which a claim must be resolved, the employee's agreement to submit such claim to arbitration will likely be upheld and enforced.

In light of this decision, all employers should, at the very least, consider including a mandatory arbitration provision as part of their employment applications for all new employees, and perhaps entering into arbitration agreements with existing employees as well. In order to be enforceable, the agreement to arbitrate must conform to state law principles of contract formation, *i.e.*, there must be a valid offer, acceptance and consideration. In addition, most appellate courts have required that the agreement be fair, and a knowing and voluntary waiver by the employee of his/her right to the judicial process. Consequently, even though agreements to arbitrate in the employment context were held to be enforceable under the recent Supreme Court ruling, employers must be very careful both with respect to how such clauses are worded and with regard to their conspicuousness in order to ensure the best chance of enforceability.

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