

Weigh pros and cons when considering mandatory arbitration

In early 2013, the 8th Circuit Court of Appeals (which has jurisdiction over Minnesota employers) issued a decision in *Owen v. Bristol Care* affirming an employer's right to compel arbitration even when an employee is seeking to assert claims on behalf of a class.

Just because employers can compel arbitration doesn't necessarily mean they should.

Sharon Owen brought claims on behalf of herself and a group of other employees alleging that Bristol had misclassified their positions under the Fair Labor Standards Act.

When she began working at Bristol, Owen signed an arbitration agreement in which she agreed that any claims she brought against her employer would be resolved through arbitration. Despite the agreement, she filed suit in federal district court, claiming that compelling arbitration would prevent her from exercising her statutory right to bring class-action claims.

Although the lower court ruled in her favor, the 8th Circuit rejected Owen's argument and upheld the terms of the mandatory arbitration agreement.

Following NLRB

The arbitration agreement Owen signed acknowledged that arbitration would be the sole means of resolving any claims she might have, including those "for which a federal or state court or other dispute-resolving body otherwise would be authorized to grant relief." The agreement explicitly referenced its application to claims for "wages or other compensation" and to claims under any law "including ... the Fair Labor Standards Act."

Although the mandatory arbitration agreement broadly covered any employment-related claims Owen could assert, it made clear that she remained free to also bring charges or other complaints to administrative agencies such as the EEOC.

After Owen filed suit, Bristol brought a motion before the district court seeking to dismiss the claims and compel arbitration. The district court denied Bristol's motion.

Citing a recent decision by the National Labor Relations Board (NLRB) in *D.R. Horton, Inc.*, the district court held that waivers of class claims are not permissible because they interfere with employee rights to engage in collective legal remedies in violation of the National Labor Relations Act.

Different from *D.R. Horton*

The 8th Circuit disagreed and reversed the lower court's ruling. The appeals court held that the mandatory arbitration agreement did not violate Owen's rights, since she still had the ability to complain to agencies like the EEOC and Department of Labor.

Since those agencies remain able to bring claims on behalf of classes of employees, the court rejected the argument that compelling arbitration interfered with employees' statutory rights. The 8th Circuit ruled that if Owen chose to pursue her claims, she would need to do so through arbitration.

After the NLRB's decision in *D.R. Horton*, it appeared doubtful that arbitration could be compelled in cases where an individual was asserting class claims.

The 8th Circuit's recent decision in *Owen* rejects the NLRB's analysis and joins other recent cases that pave the way for employers to utilize mandatory arbitration agreements.

What it means

Just because employers can compel arbitration doesn't necessarily mean that they should. There are pros and cons to such agreements that employers should weigh carefully before committing to either approach.

Advocates of arbitration agreements see *Owen* as a major victory, and point to the fact that requiring every employee's claim to be determined on its own merits is more desirable than having to defend class-action claims. They point out that arbitration is usually more private and less costly than litigation.

There is also a perception that arbitrators—selected by the parties—are better qualified than juries to sift through complex legal issues.

Critics of arbitration point out that costs savings are not a given. Because the process is less formal and lacks the same procedural rules as litigation, there are often expensive disputes over discovery and other issues that would not arise if the dispute were resolved in court.

Also, procedures allowing for early dismissal of court cases may not exist in arbitration.

Finally, the right to appeal arbitration awards is far more limited than the right to appeal court claims. An arbitrator's decision is likely to be final unless there is clear evidence of error in applying the law or determining the facts.

Absent an agreement to arbitrate employment claims, employees are entitled to pursue claims in court.

Therefore, don't wait until after a claim arises to decide whether it is better for your business to have arbitration agreements with employees. Weigh the advantages and disadvantages ahead of time to assess whether this approach is desirable for some or all of your employees.