

Make sure arbitration agreements stand alone

Employers are lining up outside lawyers' offices to get advice on arbitration agreements now that the Supreme Court has confirmed they can be used to prohibit employees from filing class-action lawsuits. [The court's May 21 decision in *Epic Systems v. Lewis*](#) shone a spotlight on arbitration agreements, one of the most effective tools for keeping employment law disputes out of court.

But before you rush to make arbitration agreements a centerpiece of your legal risk management strategy, understand what they are and what they are not.

Arbitration agreements are contracts between your organization and your employees. They are not policies, which means you must keep them absolutely separate from any policy documents such as your handbook. They must be stand-alone documents.

Here's why: For decades, lawyers have been telling employers to put a disclaimer up front in their handbooks, making it crystal clear that the handbook is not a contract and that all employment is at-will. Another common disclaimer typically states that the employer reserves the right to change anything in the handbook at any time.

Sometimes, employers that want to use arbitration to resolve employment-related issues include an arbitration agreement right in their employee handbooks. There's a problem with that. If an employee sues, the employer will invoke the arbitration agreement and try to get the case transferred into arbitration. However, the employee may successfully argue that she's not bound by the arbitration agreement since the handbook disclaimed the existence of any contract.

In other words, a handbook's "not a contract" language can trip up employers because arbitration agreements are, in fact, intended to be contractual.

Lesson: Something as simple as how an arbitration agreement is presented to employees can render them invalid. That's why incorporating agreements into your system is not a do-it-yourself project. Have your attorney craft the language.

Reason: While common law covers the general principles of what constitutes a contract, state law addresses the specifics. Judges have tossed out countless arbitration agreements that didn't meet a state's particular legal standards for creating a contract.