

Arbitration of Employment Claims

YOUR LEGAL RIGHTS

1. What is arbitration?

Arbitration is an alternative to going to court where both parties in a dispute submit their evidence to an impartial, neutral arbitrator, or a panel of arbitrators, instead of taking the dispute to a judge or jury. The arbitrator may be a lawyer and/or a person having expertise in the subject matter that is in dispute, but neither is required. The arbitrator's decision is final and enforceable in court, and usually cannot be appealed.

2. What is the difference between arbitration and a “regular” court?

Arbitration is usually more informal than the courtroom, and allows both parties a greater degree of privacy. It is also usually faster and cheaper than filing a lawsuit, which is why many employers require employees, as a condition of employment, to sign agreements agreeing to arbitrate workplace disputes, rather than take them to court.

On the other hand, employees often criticize arbitration agreements many of these reasons:

- Arbitrators do not have to be lawyers, and they may not follow the law or justify their rulings.
- Employers may choose arbitrators based on their history of pro-employer decisions, whereas employees are much less likely to know how arbitrators have ruled in the past.
- An employee is likely to be involved in arbitration with an employer only once, whereas an employer is more likely to be involved in arbitrations with many different employees over time. This could create a potential conflict of interest for arbitrators: They may favor employers, in order to keep them coming back for “repeat business.”
- Arbitration denies workers the chance to have their complaints heard by a jury of their peers, who, in the employee's view, may be more sympathetic than an arbitrator.

3. What types of claims may be arbitrated?

Employees may be required as a condition of employment to arbitrate just about any dispute that might come up in the workplace. These may include contract claims (those arising out of any employment contract or agreement that an employee may be working under), claims for unpaid wages, and even any federal and/or state discrimination claims (including age, race, gender, religion, pregnancy, disability, and national origin discrimination claims).

4. If I have signed an arbitration agreement, is there any way to bring my case into court?

Normally, no. Most employment contracts are covered by the Federal Arbitration Act, which allows arbitration agreements to be enforced as binding contracts between employer and employee.

However, if you are claiming discrimination in violation of California’s Fair Employment & Housing Act (“FEHA”), the arbitration agreement must meet at least five minimum requirements before a California court will uphold it:

- The arbitrator must be neutral;
- You must have access to essential documents and witnesses;
- The arbitrator’s award must be written;
- The arbitration must provide the same type of relief you would get in court (including attorney fees); and
- You cannot be required to pay any unreasonable costs, or any of the arbitrator’s fees.

5. Who pays arbitration costs?

It depends. Sometimes the loser has to pay the costs, but usually the employer will pay them. And if the arbitration arises out of a claim that your employer violated California’s Fair Employment & Housing Act, you cannot be required to pay any unreasonable costs, or any of the arbitrator’s fees (see the previous section). Generally, your arbitration agreement will indicate who has to pay.

6. How do I know if I have to arbitrate a claim?

If you are a member of a labor union, check your union’s collective bargaining agreement, or “CBA” – it probably contains some sort of grievance, or arbitration, procedure. Otherwise, in order for an arbitration agreement to be valid, the agreement must be “knowing.” This means that your employer must clearly present the arbitration agreement to you, and you must explicitly agree to waive the right to file a lawsuit. If you have signed an arbitration agreement, it normally will have been among a number of other documents (such as the employee manual) you signed when you were first hired. If you think you may have signed such an agreement, but can’t find your copy, ask your employer to see a copy of your employee file.

This fact sheet is intended to provide accurate, general information regarding legal rights relating to employment in California. Yet because laws and legal procedures are subject to frequent change and differing interpretations, the Legal Aid Society - Employment Law Center cannot ensure the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation.

For further information about your employment rights, please call:

The Workers’ Rights Clinic

415-864-8208 (SF Bay Area) or **866-864-8208** (Toll Free in CA)

The Workers’ Rights Clinic is a project of The Legal Aid Society - Employment Law Center, a non-profit organization focusing on the employment-related legal rights of low-income workers and providing free legal information on a wide range of employment-related problems.

