

## Manufacturers Revisit Mandatory Arbitration Agreements

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I have just returned from my summer sojourn in the wilds of New England catching up on rest, relaxation and reported court decisions. (Yes, I embrace my inner nerd!) Two recent court decisions dealing with **mandatory arbitration agreements** caught my eye and highlight why some manufacturers may gain by requiring pre-dispute employment arbitration agreements.

In 2018-19, the United States Supreme Court made clear federal law broadly favored agreements to submit disputes to private arbitration (as opposed to bringing such claims in state or federal court). In [\*Epic Systems Corp. v. Lewis\*](#) (May 21, 2018), the Court ruled the Federal Arbitration Act required enforcement of individual agreements to arbitrate statutory claims (wage claims under Federal law and discrimination claims under state and Federal laws). Last April, in [\*Lamps Plus, Inc. v. Varela\*](#) (April 24, 2019), the Court held that a party could not be **compelled to arbitrate claims on a class-wide basis absent that party's express consent**.

This summer, two more federal courts issued decisions favoring individual arbitration over litigation.

In [\*Abdullayeva v. Attending Home Care\*](#) (July 2, 2019), the Second Circuit Court of Appeals reversed a lower court and found that a **union labor contract which contained a clause requiring the arbitration** of all disputes between the union represented employees and the employer **prevented an employee from bringing an individual claim in federal court**. Perhaps significantly, under the labor agreement, an individual employee could advance his or her claims to at least mediation even if his or her union did not support the claim.

Earlier, a different federal court sitting in Manhattan ruled that the Federal Arbitration Act required the arbitration of an individual's sexual harassment claim even though a state statute banned the arbitration of sexual harassment claims. See [\*Latif v. Morgan Stanley & Co. LLC\*](#) (June 26, 2019).

These decisions make clear that by requiring arbitration as the preferred dispute resolution method, manufacturers may be able to avoid time-consuming, expensive and disruptive court litigation. Arbitration, however, is not a "one-size fits all." Arbitration agreements should be carefully drafted to permit an aggrieved employee a real opportunity to have his or her "day in court." Manufacturers may wish to confer with competent legal counsel to review the advantages and disadvantages of arbitration and to craft an appropriate agreement.

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