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Chapter 1

Mandatory Arbitration of Employment Claims after *Circuit City v. Adams* and *EEOC v. Waffle House*: When Is an Arbitration Agreement Valid and Enforceable?

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Synopsis

§ 1.01. Introduction	2
§ 1.02. Recent Supreme Court Decisions	2
§ 1.03. Reasons to Use Mandatory Pre-Dispute Arbitration Agreements	4
§ 1.04. Common Issues that Arise with Respect to the Validity of Mandatory Pre-Dispute Arbitration Agreements	5
[1] — Form of the Agreement to Arbitrate	6
[a] — Employment Applications and Related Documents.....	6
[b] — Handbooks and Related Documents	7
[c] — Signed Handbook Acknowledgement Forms.....	10
[2] — Consideration for the Agreement to Arbitrate	12
[3] — Claims to be Arbitrated.....	15
[4] — Collective Bargaining Agreements.....	17
[5] — Statute of Limitations	19
[6] — Fees and Expenses	21
[7] — Limiting Relief.....	24
[8] — Unconscionable Agreements	25
[9] — Severing Invalid Provisions.....	29
[10] — Parties to the Agreement.....	31
§ 1.05. Conclusion	31

§ 1.01. Introduction.

In an effort to reduce the high cost of litigating claims for wrongful discharge, discrimination, defamation and other employment-related matters, and to limit potential exposure, many employers have begun to require their employees to agree, in advance, to arbitrate all such claims. The increased use of pre-dispute mandatory arbitration agreements in the employment context, however, has generated substantial litigation related to the validity of such agreements and the means by which they can be enforced. Twice the United States Supreme Court has resolved issues related to the use and scope of mandatory arbitration agreements in the employment context, and the lower courts are issuing new decisions weekly.

In general, courts endorse the concept of pre-dispute mandatory arbitration agreements in the employment context; however, the Equal Employment Opportunity Commission (EEOC) can “trump” an arbitration agreement and pursue a claim in court on an employee’s behalf for victim-specific relief. In addition, many arbitration agreements have been found to be unenforceable because they were invalid under state law contract principles.

This chapter will discuss the current state of federal case law regarding the use and enforceability of pre-dispute mandatory arbitration agreements in the employment context.¹ More specifically, this chapter will focus on the issues most frequently raised when considering the contractual validity of mandatory arbitration agreements, and will offer drafting and implementation suggestions for achieving an enforceable pre-dispute mandatory arbitration program.

§ 1.02. Recent Supreme Court Decisions.

In *Circuit City v. Adams*,² the United States Supreme Court held that the Federal Arbitration Act (FAA)³ provides federal court jurisdiction

¹ Although many of the issues discussed concern state law-contract principles, and many state courts also are issuing decisions concerning the validity of arbitration agreements, for the sake of brevity, this chapter will discuss only federal court decisions.

² *Circuit City v. Adams*, 532 U.S. 105 (2001).

³ 9 U.S.C. § 1 *et seq.*