Business and Public Policy Considerations regarding Mandatory Arbitration in the Workplace

Annaliisa Gifford

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BUSINESS AND PUBLIC POLICY CONSIDERATIONS REGARDING MANDATORY ARBITRATION IN THE WORKPLACE

Annaliisa Gifford

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I. INTRODUCTION

Arbitration is a quasi-judicial system with flexible procedural rules and largely private proceedings used as an alternative to litigation.\(^1\) Pre-dispute arbitration is the contractual agreement to arbitrate a dispute before said dispute arises between parties; pre-dispute arbitration is the type of dispute resolution commonly seen in employment contracts. An agreement to arbitrate may be found in an employment agreement signed by the employee, but the agreement is sometimes buried somewhere within other hiring documents. Alternatively, the arbitration agreement might be found in the application for employment or the employee handbook. The negative effects that arbitration has on employees’ rights is a public policy concern that many businesses ought to closely examine before utilizing the practice with increasing regularity.

While Section 2 of the Federal Arbitration Act\(^2\) necessitates enforcement of arbitration agreements in maritime transactions and contracts “evidencing a transaction involving commerce,” the clear-cut scope of ‘transactions involving commerce’ has not always been certain.\(^3\)

Since the 1991 Supreme Court decision of Gilmer v. Interstate/Johnson Lane, courts in this country have almost uniformly upheld enforcement of employment arbitration clauses in the United

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2. [Hereinafter FAA].
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States.\textsuperscript{4} \textit{Gilmer} represented, for the first time, that a statutory civil rights claim may be subjected to mandatory arbitration.\textsuperscript{5}

Before 1995, there was a split among U.S. courts interpreting Section 2, with some courts concluding that the FAA applied only to those contracts where both parties contemplated an interstate connection.\textsuperscript{6} Then, in 1995, the Supreme Court in \textit{Allied-Bruce Terminix Companies, Inc. v. Dobson}, held in a 7-2 opinion that the phrase “involving commerce” entails a full exercise of Congress’s power under the Commerce Clause.\textsuperscript{7}

Following these decisions, in 2001, the Court affirmed that the FAA covers employment disputes that require arbitration to resolve work-related disputes.\textsuperscript{8} In \textit{Circuit City Stores, Inc. v. Adams}, the Court held that an employment application which included a mandatory arbitration provision was not excluded from the FAA’s coverage following the statute’s exemption clause.\textsuperscript{9}

Since the broadening of “transactions involving commerce” under Section 2 of the FAA, arbitration practice has been touted as being cost-effective, time efficient, and confidential.\textsuperscript{10} With the FAA continually preempting any state statute that conflicts in any way with arbitration, it is very likely that an arbitration clause in an employment contract will be binding on the employee, thus shutting out the individual’s constitutional access to the court system due to the employee signing a contractual waiver within an employment contract.\textsuperscript{11}

Section 2 of the FAA specifically states that agreements for arbitration are valid, irrevocable, and enforceable, save upon such


\textsuperscript{6} \textit{Id.} at 189.


\textsuperscript{9} \textit{Circuit City Stores}, 532 U.S. at 109 (2001).


\textsuperscript{11} Southland Corp. v. Keating, 465 U.S. 1, 10 (1984); \textit{See also} \textit{Allied-Bruce Terminix Cos. v. Dobson}, 684 So. 2d 102, 106 (Ala. 1995).
grounds that exist at law or in equity for the revocation of any written contract. 12 Further, arbitration clauses themselves are severable from the entirety of the contract, so if the employment contract itself is unenforceable, it is very likely that the arbitration clause will still be enforceable.13

Empirical evidence shows us that judges in the U.S. are more likely to compel arbitration than to deny enforcing an arbitration clause when faced with a motion to compel.14 Thus, it is no surprise that businesses and the judicial system favor arbitration as a form of alternative dispute resolution to resolve claims efficiently and keep them out of the already clogged judicial system.15

For employees, this prospect is incredibly intimidating. For example, in the context of asserting a statutory discrimination claim against a corporate employer with extensive bargaining power, it is easy to see how an employee might bite the bullet rather than make the claim.

Part I discusses the potential business incentives to use arbitration and to include agreements to arbitrate within employee contracts. Part II reviews the ethical considerations and drawbacks to implementing mandatory arbitration in employment law disputes, especially as it pertains to statutory discrimination and harassment claims. Part III includes considerations for businesses when confronted with the decision to include an arbitration agreement in employment contracts, as well as some guidelines for drafting arbitration clauses to mitigate policy concerns. The analysis concludes with a discussion of best practices for businesses to consider when they decide to include arbitration clauses in their employment contracts, in light of the benefits and ethical considerations in the advent of the #MeToo movement.16

12. Doctor’s Assoc. v. Casorotto, 517 U.S. 681 (1996) (holding that the Montana statute at issue was in direct conflict with the FAA, thus the Montana law was preempted by federal law), See 9 U.S.C. § 2 (2019).
16. History & Vision, ME TOO, https://metoomvmt.org/about/ (last visited Jan. 12, 2020) (describing that the #MeToo movement started in 2006 as a grassroots movement to help young women and girls, particularly Black women and girls, who are survivors of sexual violence; after the spread of the #MeToo movement on Twitter, the movement began a universal conversation about the
II. BUSINESS INCENTIVES FOR USING MANDATORY ARBITRATION

Given the history of judicial enforceability of arbitration agreements in the U.S., it is no wonder many corporations and businesses use the clauses to their advantage.17

A. Epic Systems Framework

In the 2018 case, Epic Systems Corp. v. Lewis, the U.S. Supreme Court held that employment agreements that require employees to arbitrate disputes individually do not violate the National Labor Relations Act.18 The Court held that nothing in the National Labor Relations Act19 guaranteed class and collective action procedures.20 The majority in Epic Systems agreed that the Congressional intent of the NLRA appeared to be the desire to create equality of bargaining power in the workplace between employees and management by protecting the right to unionize and engage in collective bargaining.21

Some have seen the Epic Systems ruling as yet another illustration of the decreasing power of employees in the U.S. political system.22 Others, including many businesses who utilize arbitration agreements, viewed the Court’s decision in Epic Systems as a return to the freedom of contract in employment law.23

The Epic Systems rule makes it far more likely that employees simply will not pursue low-value claims or individual claims in general.24 The practical result is incredibly beneficial to employers who care about women, girls, and trans individuals to experience a life free of prevalent sexual and domestic violence.

19. [Hereinafter NLRA].
24. Id; Epic Systems, 138 S. Ct. 1612,1624 (2018) (“Seeking to demonstrate an irreconcilable statutory conflict . . . the employees point to Section 7 of the NLRA. That provision guarantees workers ‘the right to self-organization, to form,
who wish to be virtually immune from claims brought by their employees.25

Mandatory arbitration procedures allow employers to require all non-unionized employees to agree, as a condition of employment, that any individual statutory claims or other litigable claims will be governed by private arbitration rather than through the public court system.26 Once the substantive and procedural differences of arbitration are understood, it is fairly simple to see why many employers choose the privacy and speed of arbitration over the publicity and comparative difficulty of litigating the same claims.27

B. Privacy

First, there is significant employer and employee privacy in arbitration, and many companies prefer arbitration based on this fact alone.28 Open court proceedings may expose corporate misconduct directly on the public record; in contrast, via arbitration, corporations can protect their reputation to an extent and keep potential wrongdoings private and out of the public view.29

The process does not allow complete privacy, but rather a heightened level of privacy as compared to open court proceedings.30 Employment arbitration in the United States is private, rather than completely confidential in nature.31 While the public cannot attend an arbitration hearing, and arbitrators and administrators are precluded from disclosing any information about

join, or assist labor organizations, to bargain collectively through representatives of their own choosing. . . ’ From this language, the employees ask us to infer a clear and manifest congressional command to displace the Arbitration Act and outlaw agreements like theirs. Section 7 focuses on the right to organize unions and bargain collectively. It may permit unions to prohibit arbitration. . . But it does not express approval or disapproval of arbitration. It does not mention class or collective action procedures. It does not even hint at a wish to displace the Arbitration Act- let alone accomplish that much clearly and manifestly, as our precedents demand.”)

28. Id.
30. Id.
31. Id.
the arbitration, the parties are free to disclose any information, unless a non-disclosure agreement binds them as part of the agreement to arbitrate.  

Further, the parties would need to publicly disclose an arbitration award when the party seeks to enforce an arbitration award in court. Most courts throughout the U.S. will refuse to issue an award where the award is under seal, so the award on which the court relies will typically need to remain public.  

The privacy of arbitration guarantees considerably less negative media attention to companies as a result of potentially damaging claims such as sexual harassment or whistleblower claims. It is clear, then, that arbitration serves as an incredible benefit for businesses who wish to preserve their public image or have already been entrenched in media displays and desire a way to quickly and quietly settle their employee disputes.  

As an example, Dov Charney, the founder of American Apparel, kept countless corporate misgivings out of the public eye by requiring employees to sign arbitration and confidentiality agreements. Investors in American Apparel, as well as the public, were kept in the dark for years concerning the allegations of sexual harassment against Charney. The board of American Apparel was aggressive about using arbitration clauses to the advantage of the company. The allegations against Charney would likely have become known to the public much earlier had it not been for requiring employees to enter arbitration and requiring those same employees to sign confidentiality agreements regarding any settlement reached. Some argue that without arbitration agreements, American Apparel models’ sexual harassment allegations against Charney would have been released earlier.  

Those critiquing arbitration clauses argue the confidentiality provisions instituted by the company were the actual mechanisms used to silence the employees. Regardless of which legal

32. Id.  
33. Id.  
34. Id.  
36. Id.  
38. Id.  
39. Id.  
41. Id.
mechanism controlled the outcome, arbitration along with confidentiality provisions allowed the corporation to take more time internally to probe the allegations before the board ultimately decided to oust Charney. While controversial, arbitration confidentiality may be beneficial for companies and corporations who want to buy time for their in-house legal counsel to investigate alleged misconduct and allow their lawyers to address the issue internally before the public catches wind, with the resulting publicity ultimately negatively affecting sales or revenue.

Businesses often have an interest in keeping arbitration outcomes confidential for a number of reasons: to protect secret commercial or scientific information, to protect the company’s reputation, to avoid revelation of certain business strategies, and to not upset customers with a public display of problems with an employee or group of employees.

C. Providing a Realistic Path for Employees

Another incentive for arbitration in the business employment law context is that without employment arbitration, many claims filed by employees would not attract the attention of private lawyers because the stakes are too small, and outcomes may be uncertain. Many plaintiffs’ attorneys are incredibly selective about the cases they choose to take on due to the unpredictability of jury awards and the difficulty of facing a corporate or big business adversary. As a result, without arbitration, many employee claims would be filed with administrative agencies that ultimately often do not have the resources to litigate for the employee. For example, in order for employees to file a discrimination lawsuit against their employer, they must first file an Equal Employment Opportunity Commission (“EEOC”) claim and then obtain a right to sue letter; however, a similar requirement does not exist for most private arbitration proceedings.

43. Veasey, supra note 27.
45. Id. at 563
46. Id.
The EEOC,\textsuperscript{48} for example, is so backlogged and underfunded that it has begun closing cases without even investigating them.\textsuperscript{49} Part of this is due to the fact that since the 1980s, the U.S. workforce has grown by fifty percent, yet Congress has kept the EEOC’s funding relatively flat.\textsuperscript{50} Administrative agencies are proving to be a difficult place for employees to bring their claims and to litigate them.\textsuperscript{51} A study by Lex Machina shows that from January 2009 through July 2017, of the 54,810 federal employment discrimination and harassment cases that were filed and closed, employees who brought suit won only 584 times in trial (roughly one percent total), while employers won 7,518 of those cases (about fourteen percent), and another 3,883 of those cases were settled on procedural grounds, many dismissing the employees’ claims.\textsuperscript{52}

The employees that are most likely to obtain a more desirable settlement from a strictly litigation-based system are those who are represented by competent, often high-paid, counsel.\textsuperscript{53} Employees who elect to represent themselves in a lawsuit against a business or those who retain less-than-desirable counsel will be faced with an unpredictable litigation proceeding and jury trial against a business with tremendous bargaining power in the same arena.\textsuperscript{54} Even if the employee does get the employment case to the jury, the cases are often still very hard to prove.

\textsuperscript{48} Id.
\textsuperscript{49} Id.
\textsuperscript{51} Id.
\textsuperscript{52} Id. (likely settlement of claims making up the remaining 78% of claims).
\textsuperscript{53} Estreicher, \textit{supra} note 44, at 563; \textit{see also}, Selmi, \textit{supra} note 44, at 556.
\textsuperscript{54} Id.
D. No Jury Trial

Arbitration guarantees the lack of a jury trial, which can be extremely beneficial for companies. Additionally, arbitration proceedings rarely award punitive damages.\textsuperscript{55} For example, New York Courts held in \textit{Garrity v. Lyle Stuart, Inc.}, that the judiciary is better equipped than arbitrators to determine punitive damages.\textsuperscript{56} \textit{Garrity} held that an arbitrator has no power to award punitive damages, even if the parties agree, and that damages of this sort are reserved to the courts as a matter of public policy.\textsuperscript{57}

Further, limiting employee access to the courts via arbitration allows employers to decrease the possibility of a strenuous payout to an employee at a jury trial. A recent federal sexual harassment jury trial in New York State resulted in a $13 million award against the employer, including $11 million in punitive damages under Title VII and New York State Human Rights Law.\textsuperscript{58} Awards like these are intimidating to even the most wealthy corporations, and for this reason, more employers are reaching for the arbitral forum in their employment contracts.

E. Flexibility

With the procedural rules of arbitration being governed by contract or by the chosen arbitration forum, such as American Arbitration Association, businesses are afforded the luxury of being able to “shop around” to the extent necessary to find procedural arbitration rules which are most favorable to their company and interests. Since the ruling in \textit{AT&T Mobility LLC v. Concepcion}, even if state law prohibits the arbitration of a particular claim, the FAA preempts this law, so therefore the claim is arbitrable despite the conflicting state law.\textsuperscript{59} This decision makes it relatively effortless for businesses to creatively craft employment arbitration


\textsuperscript{56} Id.

\textsuperscript{57} Id.


agreements and rarely have them disturbed. The parties (and typically the business, since they’re crafting the employment agreement) have the freedom to define what claims will be arbitrated, when they will be arbitrated, and how the process will proceed.60

Further, the procedural flexibility of arbitration allows company executives to be more easily accommodated since the public court system often has busy calendars and is often stacked with cases.61 In the public court system, the attorneys, plaintiffs and defendants are often at the mercy of the judge’s discretion as far as how the case will proceed and what the schedule will look like. Arbitration allows corporations to choose the location, timing, and rules governing each proceeding.

**F. Limited Appeal**

Section 2 of the FAA provides that arbitration agreements “shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.”62

And under Section 10 of the FAA, an arbitration award can only be vacated: (1) where the award was procured by fraud; (2) where there was partiality or corruption evident in any of the arbitrators; (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing for sufficient cause shown, or in refusing to hear evidence material to a controversy; or another misbehavior by which the rights of a party have been prejudiced; or (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award was not made.63

Thus, when courts do review arbitration awards by employers, they will not vacate an award for simple errors in judgment or mistakes of law: the errors must be truly significant and apparent on

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60.  *Id.*
62.  Validity, Irrevocability, and Enforcement of Agreements to Arbitrate of 2019, 9 U.S.C.S. § 2 (2019). (LexisNexis, Lexis Advance through Public Law 116056, approved Aug. 23, 2019) (“A written provision in maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.”); *see also*, Beth Rowe, *COMMENT: Binding Arbitration of Employment Disputes: Opposing Pre-Dispute Agreements*, 27 U. Tol. L. Rev. 921, 924 (1996).
the face of the award.\(^{64}\) This is a high threshold. It is because of this high threshold that arbitration awards are rarely disturbed.\(^{65}\) Arbitration awards are also rarely disturbed based on the Supreme Court’s policy liberally favoring arbitration agreements.\(^{66}\)

Errors of fact or law are insufficient to vacate an award; this is likely due to the very nature of binding arbitration, and how it differs from other forms of ADR because, similar to litigation, arbitration is an adjudicatory process where the arbitrator’s decision is binding upon the participants.\(^{67}\) The grounds for overturning or vacating an arbitrator’s decision are so limited that they essentially deny parties the right to an appeal.\(^{68}\)

**G. No Requirement for Reasoned Award**

Another advantage is the lack of a written opinion, which contributes to the confidentiality aspect discussed above.\(^{69}\) Arbitrators are free to issue arbitration awards without ever issuing a written opinion, furthering the veil of secrecy favorable to the defendant.\(^{70}\) Even if a party desires a written transcript, they may be difficult, if not impossible to acquire.\(^{71}\)

**H. Legislation Protecting Confidentiality**

Arkansas, California, Missouri, and Texas have legislated specific statutory protection for arbitration communications.\(^{72}\) In other states, case law provides similar confidentiality protection.\(^{73}\) In states with legislation and case law designed to protect the confidentiality of arbitration proceedings, courts are more likely to

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64. *Id.*  
68. *Id.* at 936.  
69. *Id.* at 938.  
70. *Id.*  
73. *Id*; Bjc Health Sys. v. Grp. Health Plan, 30 S.W.3d 198 (Mo. Ct. App. 2000) (holding that “no admission, representation, statement, or other confidential communication made in setting up or conducting such [arbitration] proceedings not otherwise discoverable or obtainable shall be admissible as evidence or subject to discovery” based on the Missouri statute).
be favorably disposed to parties seeking relief from the production of arbitration documents within discovery. Given the differing levels of support that state jurisdictions have regarding arbitration, the choice of law provision in an arbitration agreement can be drafted strategically.

I. Speed

Together, the procedural differences of arbitration and litigation often allow the arbitration process to resolve a dispute with more economy than the litigation process. Litigation of an employee claims, including appeals, could extend upwards of eight years, whereas the Institute for Civil Justice of the Rand Corporation found that the average arbitration decision is reached in approximately 8.6 months.

Moreover, allowing flexibility in the procedural schedule of arbitration means that businesses have more time to focus on the ordinary course of business, as opposed to defending against employee discrimination claims. The flexibility of arbitration may also mean that the business can allocate more time and resources to decreasing the likelihood that an employee will bring discrimination or harassment claims. Additional funds could be allocated to the human resources or legal department to ensure that the business is complying with federal statutory discrimination claims and ensuring that other employees and supervisors are educated on the internal and legal repercussions of discriminating against or harassing other employees.

J. Predictability

Further, given the legal climate in the years since Gilmer and progeny, more corporate counsel and businesses are mandating employment arbitration upon the assurance that the courts will enforce the arbitration agreement if a motion to compel is brought.
Employers are comfortable mandating arbitration in employment contracts with employees, as it has become apparent that the law and the FAA protect arbitration agreements entered into by employers outside of the transportation industry. Indeed, the Supreme Court restated its approval of mandatory employment arbitration more recently in *Penn Plaza LLC v. Pyett*, holding that a collective-bargaining agreement entered into by union members mandating arbitration was fully enforceable under federal law even where the union members alleged age discrimination under the Age Discrimination in Employment Act of 1967.

Another procedural advantage which enhances the speed of arbitration proceedings is that arbitrators are not generally required to “find facts” in the traditional judicial sense, justify awards, or even describe the process by which they arrived at their decisions.

**K. An Effective Disincentive to Bring Claims**

Finally, the last consideration in the inclusion of mandatory arbitration provisions is the potential advantage to corporate counsel. Top corporations such as NCR, AT&T, U.S. West, Bank of America, and Chevron will evaluate lawyers and contract managers on the basis of how many disputes were avoided, what costs were saved, and the creation of solutions intended to preserve existing business relationships as opposed to evaluating based on an attorney’s record of lawsuits won. It is clear to see why corporate counsel would recommend incorporation of mandatory arbitration on employees, to the extent that the law allows it.

Each year, some sixty million American employees will enter into mandatory arbitration provisions with their employers; of that number, approximately 6,000 employment arbitration cases are filed. Thus, only one in about 10,400 employees subject to binding arbitration actually will file a claim under the procedures each year. New York University of Law Professor Cynthia Estlund

compulsory arbitration pursuant to an arbitration agreement in a securities registration application); Circuit City (holding that a contract of adhesion, or standard-form contract, drafted by the employer with superior bargaining power which doesn’t allow the party to modify the agreement whatsoever, and as a prerequisite for the job was procedurally unconscionable).

77. *Id.*
82. *Id.*
83. *Id.*
compared arbitration filing rates to employment case filing rates in federal and state court and found that if employees bound by mandatory arbitration filed claims at the same rate as in court, there would be anywhere from 206,000 to 468,000 claims filed annually, or thirty-five to eighty times the current actual rate of claims filed by employees subject to binding arbitration.84

With the obvious effect of binding mandatory arbitration keeping employee discrimination and harassment claims from being brought, corporate attorneys are celebrated for utilizing ADR policies that have the effect of lessening the amount of litigation a company is faced with.85 However, binding mandatory arbitration is criticized in this nation for being contrary to public policy concerns relative to worker’s rights in this nation; it is nonetheless clear that as a form of self-preservation, many attorneys in the corporate context will advocate for the procedure as a claim-limiting mechanism.

Discussion of the business benefits of mandatory employment arbitration discussed throughout this section are, of course, non-exhaustive; arguably, there are other benefits specific to individual companies, depending in large part on their industry and the type of employee disputes that are typically brought within that industry.

The predictability, uniformity, flexibility, privacy, relative ease, favorable legal environment, avoidance of jury trial, limited appeal, and disincentive of litigation are all factors that make arbitration an easy choice for many businesses. However, in the wake of the #MeToo movement and other public policy concerns, many companies may want to take a close look at their binding arbitration employment procedures and reevaluate if and how to implement these clauses in employment contracts.

III. ETHICAL CONSIDERATIONS AND DRAWBACKS OF COMPANY IMPLEMENTATION OF MANDATORY ARBITRATION IN EMPLOYMENT CONTRACTS

This section discusses some of the ethical and public policy concerns of implementing mandatory arbitration agreements as they relate to employees. Business ethics and public policy in recent years have been increasingly intertwined.86 In the wake of the

86. Jenny Abel, Strategy Beyond Markets: The Intersection of Business, Public Policy and Ethics, UVA DARDEN: IDEAS TO ACTION (Mar. 23, 2017),
#MeToo movement, for example, businesses have rushed to ensure they comply with Title IX and other federal laws. As a contextual example, Kate Upton accused Guess co-founder Paul Marciano of sexual harassment on Twitter and within hours after her tweet, Guess’ company shares dropped almost eighteen percent. These facts alone demonstrate that claims against a company’s public image or corporate officers often damage the company reputationally and financially, sometimes irreparably.

Non-market pressures, such as public policy and media coverage, can have just as immense of an effect on a company’s brand as can core business issues such as supply and demand. Perhaps more so than ever, businesses are engaging in more transparent practices and increasing their online presence in a variety of new ways, such as social media, in order to retain their markets and increase business.

With so many businesses acutely aware of and impacted by their public image and reputation, and so many employees increasingly critical and aware of their employer’s core ethical system, businesses would be wise to urgently consider public policy concerns posed by binding arbitration.

A. Corporations Begin Limiting Arbitration in Response to Employee Demands

Some companies are finding themselves involved in public scandals related to mandatory arbitration. In 2019, Google became

https://ideas.darden.virginia.edu/strategy-beyond-markets-the-intersection-of-business-public-policy-and-ethics (discussing the nonmarket forces such as human rights, government regulation, environmental activism, and other special interests group which have created a need for businesses to develop a different and proactive approach to these pressures and factors).

87. Sachin Bave, Companies Reopening Old Cases, Seek Legal Opinion Fearing #MeToo Blow, ECON. TIMES (Oct. 11, 2018), https://economictimes.indiatimes.com/news/company/corporate-tends/companies-reopening-old-cases-seek-legal-opinion-fearing-metoo-blow/articleshow/66157.cms?from=mdr (discussing how many corporations are revisiting cases and interviewing women in each department to discuss any sexual harassment that is or may have taken place within the workplace).

88. Samantha Cooney, Companies are Losing Millions After #MeToo Allegations Like Kate Upton’s Claim Against Guess’ Paul Marciano, TIME (Feb. 2, 2018), https://time.com/5130340/kate-upton-guess-stock-price/.


90. See Abel, supra note 86.


92. Alexia Campbell, Google Employees Fought for Their Right to Sue the Company--and Won, VOX (Feb. 22, 2019),
the latest company to end mandatory arbitration for employees in response to employee pressure and protests.\textsuperscript{93}

This decision came after Google decided to end arbitration for sexual harassment claims made against Google’s employees in 2018.\textsuperscript{94} Google employees demanded a public report on the number of sexual harassment complaints made against Google employees and the outcomes of those claims.

Google responded by declaring it would begin to keep more detailed reports of these complaints, the trends thereof, and subsequent disciplinary action.\textsuperscript{95} Google’s policy response came only after employee revolution and protest. This protest was largely inevitable when employees began to understand that their fundamental constitutional rights, specifically the Seventh Amendment right to a jury trial, was potentially being limited by their contractual agreement to arbitrate any dispute they may have with their employer.\textsuperscript{96}

\textbf{B. National Balancing Decision for Judicial Enforceability}

Undoubtedly, the nation’s high court has struggled with “where and when” to enforce binding mandatory arbitration against employees who have signed these agreements due to a lack of employer-employee bargaining power. Thus, a national balancing decision has been presented, weighing the benefits of arbitration with the public policy issues raised by the practice.

In \textit{Epic Systems}, the Supreme Court struggled with the question of arbitration enforceability, and the dissent voiced these concerns as the more liberal members of the Court have for decades.\textsuperscript{97} \textit{Epic Systems} was adjudicated in 2018 and added to the litany of pro-arbitration rulings, holding that an arbitration agreement in an employment contract calling for individualized proceedings was to

\begin{footnotesize}
\begin{itemize}
  \item \textsuperscript{93} Id.
  \item \textsuperscript{94} Id.; see also Alexia Campbell, \textit{Google Announces Changes to Sexual Harassment Policies After Global Employee Walkout}, Vox (Nov. 8, 2018), https://www.vox.com/2018/11/8/18075840/google-ceo-announces-sexual-harassment-policy.
  \item \textsuperscript{95} Id.
  \item \textsuperscript{96} Campbell, \textit{Google Announces Changes to Sexual Harassment Policies After Global Employee Walkout}, supra note 94; Edward Brunet, \textit{Arbitration and Constitutional Rights}, 71 N.C. L. REV. 81, 81-120 (1992).
\end{itemize}
\end{footnotesize}
be enforced under the FAA because the National Labor Relations Act was not in conflict with the FAA; thus, the statutory claim could be adjudicated under the arbitration agreement signed.\textsuperscript{98}

In her dissent, Justice Ginsberg wrote, “[t]he FAA’s legislative history also shows that Congress did not intend the statute to apply to arbitration provisions in employment contracts.”\textsuperscript{99} Ginsberg continued, “[t]he inevitable result of today’s decision will be the underenforcement of federal and state statutes designed to advance the well-being of vulnerable workers.”\textsuperscript{100} The dissent emphasized the lack of mutuality in such agreements, as well as the fact that employees are in subordinate positions when compared with their large, corporate employers with extensive bargaining power.\textsuperscript{101} There is a resulting unspoken truth stemming from the decision in \textit{Epic Systems}: inevitably, arbitration contacts in employment contracts will likely begin to appear with striking regularity.\textsuperscript{102}

\textbf{C. Lack of Bargaining Power}

Stevens’s dissent in the \textit{Gilmer} cases also displays the judicial concern for the lack of bargaining power in employee arbitration agreements as a matter of policy.\textsuperscript{103} Stevens’s dissent in \textit{Gilmer} declares: “In my opinion, arbitration clauses contained in employment agreements are specifically exempt from coverage of the FAA.”\textsuperscript{104}

Stevens went on to quote the late Justice Burger:

Plainly, it would not comport with the congressional objectives behind a statute seeking to enforce civil rights protected by Title VII to allow the very forces that had practiced discrimination to contract away the right to enforce civil rights in the courts. For federal courts to defer to arbitral decisions reached by the same combination of forces that had long perpetuated invidious discrimination would have made the foxes guardians of the chickens.\textsuperscript{105}

\textsuperscript{98}. Epic Sys. Corp., 138 S. Ct. at 1627.
\textsuperscript{99}. \textit{Id.} at 1643.
\textsuperscript{100}. \textit{Id.} at 1646.
\textsuperscript{101}. Epps, \textit{supra} note 97.
\textsuperscript{102}. \textit{Id.}
\textsuperscript{103}. \textit{Gilmer v. Interstate/Johnson Lane Corp.}, 500 U.S. 20, 36-43 (1991) (holding that a claim brought under the Age Discrimination in Employment Act could be subjected to compulsory arbitration pursuant to an arbitration agreement in a securities registration application).
\textsuperscript{104}. \textit{Id.} at 36.
\textsuperscript{105}. \textit{Id.} at 42.
This begs the question: to what extent should courts defer to corporate drafters of arbitration agreements meant to be held against employees?\textsuperscript{106} This unfair bargaining power is reflected in ubiquitous take-it-or-leave-it contracts, and corporations will almost inevitably forbid their employees from negotiating an arbitration clause or forbid them to continue employment without conceding to its terms.\textsuperscript{107}

\textbf{D. Did the Employee Meaningfully Consent to the Clause?}

The non-consensual nature of arbitration agreements evokes another public policy concern.\textsuperscript{108} This critique stems from the fact that many employees do not typically read or understand arbitration clauses, and often are not given the option to opt-out of them.\textsuperscript{109} Studies show that only a small fraction of adults and employees read legal forms and an even smaller percentage understand them.\textsuperscript{110}

This is problematic given the fact that courts are likely to view arbitration clauses as enforceable because the judiciary views them almost uniformly as a bargained-for element of the contract.\textsuperscript{111}

However, many employees lack the legal knowledge and background to understand what constitutes arbitration and how their assent might limit their rights, making it difficult to view this process as an informed decision to consent to arbitration as a matter of public policy.\textsuperscript{112}

This concern has evoked litigation, especially in the tech-age, however, courts continue to favor arbitration as well as the notion that effective notice was given, even on a cell phone screen.\textsuperscript{113}


\textsuperscript{110} Id.


\textsuperscript{112} Levinson, \textit{ supra} note 108, at 492.

\textsuperscript{113} Meyer v. Uber Techs., Inc., 868 F.3d 66 (2d Cir. 2017).
the 2017 *Meyer v. Uber Techs* case, the Second Circuit held that an electronic “click” will suffice to signify acceptance of contract terms, as long as the layout and language of the site gives the user reasonable notice that a click will manifest assent to an agreement, an arbitration agreement in this case.\(^{114}\) The court opined that despite the fact that Meyer’s assent to arbitration was not express, it was “unambiguous in light of the objectively reasonable notice of the terms,” and that was enough for him to be bound by the contract term of arbitration.\(^{115}\)

Anecdotally, this prompts the question of how often users of electronic devices are meaningfully, or even consciously, consenting to electronic agreements due to the rapid nature with which users click on screens.\(^{116}\) Whether this matters for reasons of legality appears to be a moot point as expressed by *Meyer*, yet it still demands consideration from a public policy standpoint.\(^{117}\)

### E. Employee Difficulty with Financial and Procedural Implications

Yet another public policy implication for businesses wishing to continue or begin to implement binding mandatory arbitration are the considerable procedural and financial difficulties faced by employees wishing to file a claim.\(^{118}\) While litigation itself is procedurally strenuous, arbitration poses its own, unique difficulties for the average worker in the United States.\(^{119}\) When the agreement itself is likely to have been drafted by the employer, thus favoring the employer in terms of where and how the arbitration will proceed, employees must submit to the drafter’s preferences.\(^{120}\) This fact is concerning as a matter of public policy because the average employee has less revenue to commute across the country for an arbitration near corporate headquarters than would the corporation itself.

Further, many arbitration agreements require the employee to split the cost of arbitration with the employer, which may lend itself

\(^{114}\) Id. at 79.

\(^{115}\) Id.


\(^{117}\) *Meyer*, 868 F.3d 66 at 80.


\(^{120}\) Id. at 42.
to being cost-prohibitive for the average U.S. employee.\textsuperscript{121} Courts are split as to whether arbitral cost-sharing arrangements are valid, with some courts enforcing these cost splitting arrangements and other courts ruling that the employer alone should pay the costs.\textsuperscript{122}

Regardless, the filing costs for employees making a claim via arbitration is not the only fee involved in the arbitration process, especially when you consider high attorney’s fees for employees.\textsuperscript{123} These fees, which may or may not be split with the employer or paid for by the employer, will also include an arbitrator’s \textit{per diem}, or hourly rate: fees at the beginning of the process and substantial costs upon conclusion of the arbitration.\textsuperscript{124} One estimate showed that the average cost of arbitrating an employment claim from start to finish was around $20,000.00.\textsuperscript{125}

\textbf{F. Employee Unconscious Waiver of Rights}

The next ethical consideration for businesses is the potential absence of constitutional rights for employees in private arbitration proceedings.\textsuperscript{126} Especially when viewed from the lens that these agreements may not be truly consented to by the employee, many critics see forced arbitration in employment as a potential violation of the Seventh Amendment right to a trial by jury.\textsuperscript{127} This is a persuasive argument since, as discussed \textit{supra}, Section D, many adult employees will not read their contract agreements for employment and might be signing to terms without understanding or fully assenting to having their Seventh Amendment right waived.

The tension in this argument is found in the fact that businesses also have a constitutional right to make contracts.\textsuperscript{128} In the same

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\textsuperscript{123} Nagele-Piazza, supra note 119, at 45 (indicating the fee cost via the American Arbitration Association is often around $200 compared to the $350 filing fee in federal court).

\textsuperscript{124} Id. at 46.

\textsuperscript{125} Id.


\textsuperscript{128} Michael Peabody, \textit{Eliminating the Mandatory Trade-off: Should Employees Have the Right to Choose Arbitration?}, 1 PEPP. DISP. RESOL. L.J. 107, 108 (2000).
vein, in seeking employment, employees have the right to waive their constitutional rights in order to secure employment.\textsuperscript{129} Thus, as a matter of public policy, it would be wise for a business to balance their exercise of constitutional rights alongside the rights of their employees to ensure a more equitable experience for both parties. Businesses should consider their position coming from a place of superior bargaining power and the ways in which this might affect contractual obligations between themselves and employees.

\textbf{G. Arbitration as a Corporate Employer Shield}

Another consideration for businesses when considering whether to include arbitration agreements in their employment contracts is the fact that for many years, arbitration has been used as a shield for abusive employer practices. Title VII claims will be used as a backdrop for the forthcoming analysis involving such abusive employer practices. Some scholars argue that mandatory arbitration may actually promulgate sexual harassment culture in the workplace, and the same could be likely said for discrimination culture, as this analysis will show, this tends to be the case.\textsuperscript{130}

Our culture of constant connectivity means that most of the nation is now acquainted with a growing intolerance of workplace abuse, including sexual harassment in the wake of #MeToo. Such misconduct in the workplace setting is pervasive in the U.S. workplace, and in the past seven years alone, U.S. companies have paid near $300 million in public penalties resulting from sexual harassment claims brought by employees.\textsuperscript{131} Mandatory arbitration may undermine protective laws such as Title VII, the law forbidding sexual harassment in the workplace, by providing a shield from negative publicity for employers by allowing them to secretly pay out victims and brush harassment claims brought by employees.\textsuperscript{132} This effect does little to develop case law around employment Title VII and discrimination claims, and instead allows businesses to continue abusive practices for years until forced to litigate publicly or until a victim breaks their settlement agreement.\textsuperscript{133}

The very nature of arbitration occurring in a private conference room rather than in a public court, as well as the financial difficulty of receiving arbitrators’ decisions, combined with secret settlements

\textsuperscript{129} Id.
\textsuperscript{130} Levinson, supra note 108, at 504.
\textsuperscript{131} Id. at 505; Charges Alleging Sex-Based Harassment (Charges Filed with EEOC) FY2010-FY2018, U.S. EQUAL EMP. OPPORTUNITY COMM’N (last visited Jan. 12, 2020), https://www.eeoc.gov/eeoc/statistics/enforcement/sexual_harassment_new.cfm (Jan. 14, 2018).
\textsuperscript{132} Id. at 509.
\textsuperscript{133} Id. at 511; see also Estlund, supra note 84, at 680.
for victims of sexual harassment, showcases the need for a resolution that will strike a balance between protecting employer and employee interests.\(^{134}\) The “culture of secrecy” associated with arbitration is attributable to confidentiality norms occurring in the arbitration forum as well as amongst arbitrators.\(^{135}\) When utilizing mandatory arbitration, employers face limited “reputational sanctions,” which are often the most powerful deterrents to questionable misconduct for many large businesses and firms.\(^{136}\)

In order for businesses to be more ethically competent in the era of #MeToo and beyond, it is important that they be forthright in their mismanagement of misconduct and to display a sincere willingness to address toxic corporate culture. Recently, an uptick in the willingness to address decades-long patterns of toxicity has been evidenced, as businesses are increasingly striving towards effective resolutions of allegations of abuse.\(^{137}\)

**H. Mandatory Employment Arbitration May Stifle Discrimination and Harassment Claims**

Next, this article examines how mandatory arbitration may stifle discrimination and harassment claims brought by employees, as well as what type of employees are most often affected by these agreements. Some critics view mandatory arbitration as less of an “alternative dispute resolution” device and more of a “disappearing

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135. *Id.*
136. *Id.* at 681.
“act” as it relates to employees’ claims against their employers. The secrecy and lack of transparency of many arbitration proceedings make it difficult to conduct empirical research on arbitration as it affects employees. One empirical study by Alexander Colvin on employment arbitration showed a startlingly small number of arbitration filings. It further found a strong repeat employer effect; where employee win rates and award amounts were lower where the arbitrator worked with the employer before. The data demonstrates the procedural difficulties of arbitration, and potential inherent bias of repeat arbitrator-employer pairings, as the practice itself often has the effect of stymieing claims brought against employers, and reducing the damages awarded.

As to who is most often affected by arbitration agreements, notably more than half of private-sector non-union workers are subject to mandatory arbitration. And while some employees signed these agreements as a prerequisite to hiring, other businesses adopted these arbitration procedures simply by announcing that these procedures had been incorporated into the organization’s employment policies. As mentioned before, mandatory arbitration is found in many industries and is often implemented by large companies with many employees. A study by the Economic Policy Institute estimated that 57.6% of female workers are subject to mandatory arbitration, slightly higher than the rate for the overall population, or 56.2%. The study also estimated that 59.1% of African American workers in all industries of the United States are subject to mandatory arbitration, making African American workers the most likely to be subject to mandatory arbitration among all groups of workers identified. Further, the EPI found that employers with the lowest-paid workforces were the most likely to impose mandatory arbitration. From a public policy standpoint, this is incredibly unsettling, in light of the fact that the low-paid work sector presents as a vulnerable segment of society, making

138. Estlund, supra note 84, at 682.
139. Id.
141. Estlund, supra note 84, at 682.
143. Id.
144. Id.
145. Id.
146. Id.
147. Id.
148. Id.
them particularly susceptible to infringements on their employment rights.\(^{149}\)

Findings of gender and race-oriented arbitration outcomes should come as nothing short of disturbing.\(^{150}\) In yet another empirical study conducted by Cornell University, researchers found that within the securities industry, the gender of both the complainant and the complainant’s attorney had significant negative effects on the size of the award.\(^{151}\) Female complainants and female complainant attorneys in arbitration proceedings generated less of an award than their male counterparts.\(^{152}\) With all of these factors in mind, as a matter of public policy it is absolutely pivotal for employers to reconsider how they approach disputes with their employees. Since the arbitration practice is already so prevalent and convenient for employers as discussed in part III, infra, it is unlikely that forced arbitration provisions will be disappearing anytime soon. However, as outlined below, we can begin to shift the paradigm and introduce best practices for businesses to incorporate for a more even-handed approach that will serve to protect the interests of employers and employees alike.

IV. BEST PRACTICES FOR BUSINESS LAWYERS AS IT RELATES TO MANDATORY ARBITRATION IN THE EMPLOYMENT LAW CONTEXT

In light of the business benefits and ethical drawbacks of including binding mandatory arbitration clauses in employment contracts, this Section recommends best practices for business and corporate lawyers to consider as they advise their clients and draft contracts.

This Section presupposes that many employment contracts will include arbitration agreements, and thus prescribes some procedural and substantive mechanisms in order to make the contractual agreements fairer to all parties and enforceable, when necessary. There is a growing policy need to revise many employment arbitration agreements as they exist or implement more sound arbitration agreements if they are to continue being legal.\(^{153}\)


\(^{151}\) Id.

\(^{152}\) Id.

Hank Johnson, the sponsor of the 2008 and 2009 versions of the Arbitration Fairness Act, stated that “big business has . . . warped and corrupted the arbitration process.” 154 And this may be an accurate characterization in light of the scope of employment arbitration and the historical pattern of enforceability.

In an effort to preserve some of the business benefits of arbitration as discussed above, it is imperative for businesses and their attorneys to change the way that arbitration agreements are structured, in order for them to be conscionable, as well as ethically fair to the large class of employees these agreements are enforceable against.

In the words of Linda Sanchez, the Chair of the House Commercial and Administrative Law Subcommittee of the Judiciary Committee, “[t]o be a respected and reasonable alternative to the courts, arbitration must provide a level and fair playing field.” 155 If implemented, arbitration should aim to provide faster, more effective remedies for employees. 156 Arbitration, when used correctly, should also allow the employee’s claim to be decided on the legal merits, rather than being dismissed preemptively on a motion by the employer’s lawyer before trial. 157

A. Ensure that Employees Understand the Legal Effect of Arbitration Clauses

The first best practice is to ensure that employees understand the practical and legal consequences of signing an arbitration agreement. An employer might not be able to compel arbitration of an employment dispute if there is no valid assent to the arbitration. 158 Assent is one of the fundamental elements of any contract agreement. While each arbitration agreement will be different depending on the company and the attorney drafting the clause, it is worth the few minutes and extra explanatory documentation given to the employee for them to understand what rights they may be relinquishing by signing the agreement. This is especially poignant because many arbitration agreements will be enforceable under the FAA even if they are not signed. 159

155. Id.
156. Id. at 108.
157. Id.
158. Id. at 109.
159. Id. at 110; Seawright v. Am. Gen. Fin., Inc., 507 F.3d 967, 974 (6th Cir. 2007).
Corporate legal counsel should thoroughly train hiring managers how to fully explain the intricacies of their arbitration agreements to employees before the employees sign the employment contract. It is recommended that the employee be given a copy of the arbitration agreement as well as additional documentation that explains in plain language what the effects of this agreement will be upon any future disputes between the employee and the company.


Business attorneys drafting these contracts on behalf of employers may also want to consider drafting opt-out provisions, which allow the employees to continue working at the company despite having opted out of an arbitration agreement. Another type of opt-out provision could give the employee the option, for a contractually agreed period of time, to opt-out of arbitration after originally “opting-in.”

The large tech company, Uber, utilizes opt-out provisions in their arbitration agreements and has seen success in ensuing litigation as a result.160 Opt-out provisions may mitigate the unequal bargaining power concerns discussed above and promote enforceability of the contract where necessary.161 In Suarez v. Uber Techs, Inc., the court granted Uber’s motion to compel arbitration in an employment dispute which involved a ‘click-through’ service agreement and an opt-out arbitration provision.162

The opt-out provision crafted by Uber emphasized that arbitration is an important business decision and that the employee should not rely solely on the information in the agreement in order to understand the consequences of arbitration.163

As a matter of law, the Suarez court held that there was no procedural unconscionability because the plaintiffs had the absolute right to opt-out of the arbitration provision of the agreement.164 The court reasoned that even though the plaintiffs had less bargaining power, the plaintiffs would also be allowed to reject the arbitration

161. Id.; see also Brian Berkley, Can Opt-Out Provisions Save Arbitration Clauses?, 8 LAW360 (June 8, 2016), https://advance.lexis.com/document/?pdmfid=1000516&crid=2e983dc4-6c43-4d7f-b94b-0d90c3e6d0&pddocfullpath=%2Fshared%2Fdocuments%2Fanalytical-materials%2Furn%3AContentItem%3A5JYN-V8S1-DXHD-G53T-00000-00&pddocid=urn%3AContentItem%3A5JYN-V8S1-DXHD-G53T-00000-00&pcontentcomponentid=121100&pdteaserkey=sr5&pditab=allpods&ecomp=wpnk&earg=sr5&prid=e43857c4-b9dd-4121-bb5d-2035cd3494c&cbc=0.
163. Id. at *5.
164. Id. at *12.
provision with no consequence to the relationship with the corporation.\textsuperscript{165}

Uber also required that the Uber drivers digitally confirm that they read the arbitration agreement not once, but twice.\textsuperscript{166} This confirmation is especially poignant in the tech-age, encouraging employees to understand that they may opt out of these provisions and to not speed through the agreement process, especially when the signatures are electronic. This is key in light of the fact that an opt-out provision alone, which may be inconspicuous, will not always save an arbitration agreement from being ruled unconscionable.\textsuperscript{167}

\section*{C. Consider Excluding Certain Claims Subject to Mandatory Arbitration}

In light of the policy discussions made earlier, when drafting binding mandatory arbitration agreements in employment contracts, business attorneys may want to consider careful drafting and consider excluding certain claims from binding arbitration.

In light of recent National Labor Relations Board decisions, drafters should be sure that they don’t include language that may interfere with employees’ rights to place complaints with the NLRB.\textsuperscript{168} Doing so will likely render the arbitration provision unenforceable as unlawfully interfering with employees’ rights.

Along with this consideration, drafters of arbitration clauses might consider excluding claims of sexual harassment and sexual assault from binding arbitration, as a policy consideration in the light of the #MeToo movement.\textsuperscript{169} In the era of #MeToo, many companies are facing criticism where they compel claims of sexual harassment into private arbitration.\textsuperscript{170} Companies have announced that they will no longer compel arbitration of these claims, and ethically this seems to be the smartest move for businesses in terms of policy and public relations.\textsuperscript{171} While many courts may maintain

\begin{itemize}
\item \textsuperscript{165} Id. at *12.
\item \textsuperscript{166} Berkley, supra note 161.
\item \textsuperscript{167} Hickox, supra note 154, at 102–174.
\item \textsuperscript{168} Samantha Bononno, et al., Employers Dealt a Blow by Labor Board Decision on Arbitration Agreements, SHRM (June 20, 2019), https://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/labor-board-decision-on-arbitration-agreements.aspx (the National Labor Relations Board recently issued a unanimous decision which invalidated an employer’s mandatory arbitration agreement that could be reasonably interpreted as potentially preventing employees from filing charges with the board).
\item \textsuperscript{170} Id.
\item \textsuperscript{171} Id.
\end{itemize}
that sexual harassment and assault claims remain arbitrable under the law and the broad breadth of the FAA, as a matter of policy, business lawyers should consider this exclusion.  

V. CONCLUSION

Given the current legal environment in the U.S., the status of the Supreme Court’s holdings on mandatory arbitration in employment law, and the current make-up of the current Supreme Court, it is no surprise that so many large businesses are utilizing employment arbitration.

A 2008 survey of corporate counsel performed by Fulbright and Jaworski found that out of the 251 corporate participants in the U.S., 75% had company-mandated arbitration of employment disputes in a non-union setting.  

The EPI recently reported that 56% of non-union private-sector employees are currently held to mandatory individual arbitration procedures.  

Industries implementing mandatory arbitration include: education, healthcare, business services, information, and retail. As a general rule, the more employees a corporation has, the more likely it is to use mandatory arbitration.

Businesses are keen to understand that there is “safety in numbers.” The current trend of employers requiring mandatory arbitration has resulted in an industry-wide domino effect, influencing others to follow suit. Survey data from EPI demonstrates that among large employers who require mandatory arbitration, they have only started adopting it as readily within the last five years. In fact, 43.5% of these large establishments surveyed, with over 100 employees, have adopted binding mandatory arbitration within the last five years. At least in the U.S., the more employees a corporation has, the higher likelihood of mandatory arbitration is utilized.

Sixty seven percent of the companies surveyed by the EPI in the U.S. workplace, who had over 5,000 employees, hold those employees to mandatory arbitration.


173. Coleman, supra note 76.


175. Id.

176. Id.


178. Id.
The EPI attributes these numbers to the fact that larger organizations have more sophisticated human resource policies and better legal counsel and are more likely to adopt mandatory arbitration in order to better shield themselves against legal liability. Considering the rise of arbitration usage in the employment law context, employers and their attorneys must understand how to ethically and effectively utilize alternative dispute resolution mechanisms to resolve employment disputes. Business benefits, as well as potential ethical drawbacks of utilizing binding arbitration in the workplace should be weighed and allocated differently depending on the size of the business, the scope of the business, and the type of employee relationships it utilizes.

It is becoming increasingly important for businesses to be transparent and publicly responsible concerning their treatment of employees, so while utilizing arbitration may work efficiently for some claims, it may not always be the best solution for every claim an employee may bring. Employment arbitration continues to allow for quick, economical dispute resolution and when employed ethically and thoughtfully, will continue to be an efficient vehicle for employment dispute claims.

179. Id.
180. Id.