

# CALIFORNIA SUPREME COURT ESTABLISHES GUIDELINES FOR ARBITRATION AGREEMENTS

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In a landmark decision, the California Supreme Court established the conditions which must be met in order to enforce an arbitration clause in an employment contract. In *Armendariz v. Foundation Health Psychcare Services, Inc.* (decided August 24, 2000), the Court was confronted with the question of whether employees could be compelled to arbitrate statutory claims, including claims alleged under California's Fair Employment and Housing Act (FEHA). Although the Court concluded that the arbitration agreement in *Armendariz* was entirely unenforceable, it affirmed that arbitration of statutory, tort and contract claims is permissible provided the arbitration process does not restrict the employee's remedies. Specifically, the Court held that the following conditions must be met.

**1. No Restriction on Remedies.** The arbitration agreement must not restrict the employee's legal remedies. In other words, the employee must have the right to seek all those remedies which the employee would be permitted to seek in a court of law, including attorneys' fees and punitive damages. Further, the employee must have all the rights and remedies that the employer has under the terms of the agreement.

**2. Employer to Pay Arbitration Fees.** The Court reasoned that, since the employee would not have to pay for a judge to hear the case in court, he or she should not have to pay for an arbitrator. Further, requiring the employee to bear expenses may restrict or limit the employee's ability to bring claims. The Court, therefore, concluded that the employer should be required to pay all types of costs that are unique to arbitration.

**3. The Agreement Must Permit Adequate Discovery.** The Court ruled that adequate discovery is indispensable for the vindication of FEHA claims. Accordingly, an agreement which denied discovery in an arbitration proceeding could render the entire arbitration clause unenforceable.

**4. The Arbitrator Must Issue a Written Award.** Although the Court was not confronted with the question of whether an arbitration award was

enforceable, it held that judicial review of arbitration awards is necessary to ensure that the employee's rights under FEHA are not trampled. The Court concluded that, in order for such judicial review to be successfully accomplished, an arbitrator should issue a written arbitration decision which will reveal the essential findings and conclusions on which the award is based.

The decision in *Armendariz* is important for California employers because it establishes clear guidelines for contracts requiring the arbitration of employment disputes. Although the Court's opinion conflicts with the Ninth Circuit's decision in *Duffield v. Robertson Stephens & Co.* (9th Cir. 1998) 144 F.3d 1182 (holding that employers cannot require employees to arbitrate future claims under Title VII as a condition of employment), it will certainly apply to all claims which would otherwise be filed in state, as opposed to federal, court. We therefore recommend that all of our clients and friends who are using arbitration agreements review these agreements with legal counsel and update them in light of the *Armendariz* decision.