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## CALIFORNIA SUPREME COURT UPHOLDS EMPLOYMENT ARBITRATION AGREEMENTS (August 24, 2000)

### Summary

The California Supreme Court today issued a ruling upholding employment arbitration agreements that meet newly-specified minimum standards. The Court held that an employee who signs such an agreement may be compelled to arbitrate employment disputes, including discrimination claims brought under California's Fair Employment and Housing Act (FEHA).

### Details

The Supreme Court's decision in *Armendariz v. Foundation Health Psychcare Services, Inc.* has been long-awaited by employers that have arbitration agreements with their employees. In part, this is because the Ninth Circuit Court of Appeals (the federal appellate court for California) ruled in 1998 that mandatory arbitration of employment discrimination claims is impermissible under federal law. The Ninth Circuit has been the only circuit to reach such a conclusion. Fortunately, the California Supreme Court found the Ninth Circuit's ruling "unpersuasive," and concluded that federal law does not prohibit mandatory arbitration of employment discrimination claims in California.

The Supreme Court did not answer the much-debated issue of whether the Federal Arbitration Act applies to employment agreements. It concluded that it was unnecessary to decide this issue because the California Arbitration Act could be used to compel arbitration.

Most importantly, the Supreme Court outlined the standards that must be met for an employment arbitration agreement to be enforceable in California. Briefly summarized, these requirements are:

- The agreement must provide for a neutral arbitrator;
- The agreement may not limit statutorily imposed remedies, such as punitive or emotional distress damages;
- The agreement must provide for "adequate discovery;"
- The arbitrator must issue a written arbitration decision that will "reveal, however briefly, the essential findings and conclusions on which the award is based;"
- The agreement cannot generally require the employee to bear "any *type* of expense" (e.g., arbitration fees) that the employee would not be required to bear if he or she were bringing a civil lawsuit; and
- The agreement to arbitrate should be mutual (i.e., it should also require the employer to arbitrate any claims it has against the employee), unless there is a "reasonable justification" not to do so.

Interestingly, the Supreme Court held that the employer's arbitration agreement in the *Armendariz* case did not meet these standards and was unenforceable. In fact, the Court even refused to reform the agreement to delete the objectionable portions and enforce the remainder.

**What this means**

Employers that have arbitration agreements with their employees should examine them in light of the Supreme Court's new rules. If your arbitration agreements fail to meet these standards, you should update future versions. You should also: (1) consider providing new agreements to current employees; or (2) analyze strategies for unilaterally giving employees greater rights (matched to the Supreme Court's new requirements).

For employers who do not have arbitration agreements with employees, now is a good time to consider their value. For example, even sex harassment claims under the FEHA may now be compelled to arbitration, rather than being litigated in a civil lawsuit.

If you have any questions about this or any other topic, please contact Michael Sullivan ([msullivan@paulplevin.com](mailto:msullivan@paulplevin.com)) at (619) 744-3655.

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