

Are Your Arbitration Agreements Enforceable?

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Two recent published decisions by the California Court of Appeal send a warning to employers hoping to enforce arbitration agreements with their employees. In *Martinez v. Master Protection Company*, decided April 15, 2004, and *Fitz v. NCR Corporation*, decided April 27, 2004, the Court of Appeal rejected each employer's arbitration agreement with its employees. In both cases, the court found the employers' "take it or leave it" arbitration agreements to be unconscionable and unenforceable.

Where did they go wrong? In the case of Master Protection Company, the arbitration agreement gave the parties less time to assert claims than applicable statutes of limitation; limited the time when claims could be brought; excluded employer claims for unfair competition and misuse of trade secrets; and required the employee to split the costs of the arbitration with the employer. In the case of NCR, the arbitration agreement limited discovery to less discovery than is permitted by the California Arbitration Act or the American Arbitration Association in employment cases and excluded claims involving trade secrets, non-compete agreements or intellectual property rights.

The California Supreme Court has upheld an employer's right to impose mandatory arbitration agreements on their employees covering wrongful termination and discrimination claims, but only if those agreements meet certain minimum requirements. To be enforceable, agreements for binding arbitration of employment claims must meet each of the following requirements:

- A neutral arbitrator providing a written decision with findings and conclusions;
- Adequate discovery;
- No limitation on recoverable damages;
- No greater expense to the employee than a lawsuit in court; and
- Not one-sided, particularly with regard to the claims that must be arbitrated.

These two recent decisions by the Court of Appeal send an unmistakable message to employers: if you choose arbitration in a way that is disadvantageous to your employees, your arbitration agreement will not be enforced.