
Contracting away arbitration rights

Posted by Jackie - 2007/02/28 01:07

In negotiating a union contract, would you ever recommend contracting away arbitration rights? Assume you're being monetarily compensated.

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Re:Contracting away arbitration rights

Posted by steve - 2007/03/03 16:01

Thats a good question. I think everything is negotiable.

By negotiating away your right to arbitrate, you maintain and reserve your right to sue in court, so what are you really negotiating away?

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Re:Contracting away arbitration rights

Posted by Jim C. - 2007/03/29 18:05

Speed. Arbitration is a much speedier process of resolving a dispute, and keeps it out of the public eye. In some circumstances arbitration rights a not a good thing, many times you want a jury. Juries are much more sympathetic and less rigid. A plaintiff would generally prefer to be in front of a jury rather than an arbitration panel, the opposite is generally true for a defendant that has a good legal case, but bad on sympathy. Arbitration is also much cheaper than a court battle. Like most things in the law, it depends on the circumstances.

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Re:Contracting away arbitration rights

Posted by Jackie - 2007/10/24 23:41

Well, arbitration is usually negotiated as the sole remedy for resolution. In other words, you can't sue unless you have a federal claim. Assuming the above facts, my question is, can an employer also ask a union to give their right to arbitration? And can the union legally do it?

Assume arguendo that the employer offered a great incentive to the union in order to remove even the right to arbitrate (essentially making the "union" employee an "at will" employee). Is that legal? Does that even hold up in a court of law?

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Re:Contracting away arbitration rights

Posted by norton - 2007/10/25 15:19

One thing that should be noted in this discussion string is that arbitration rights are not only federal, but state as well. You can also opt to resolve an arbitration dispute under state arbitration rights or federal. The rules are different. It has also been my experience that employers tend to favor arbitration and employees do not. Arbitration is a process by which, generally, a panel of lawyers decides a dispute between parties, and, generally, the resolutions are more amicable, and you have fewer run away verdicts. Many people think that juries tend to hand out more money when a corporation (deep pocket) is involved than arbitration panels, which is why employers favor arbitration, generally. Also, you can contract most any right away, it is a matter for the parties. In fact, a well written contract will concentrate on what rights the parties are receiving, and which they are losing in consideration for entering into a bargain. Its a staple of good contract drafting. Finally, the reason arbitration is used more often these days is because it is a bit less costly than litigating. This is assuming you contract calls for binding arbitration as opposed to non-binding arbitration. Yet another issue to consider.

Post edited by: norton, at: 2007/10/25 15:21

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