

## **California Supreme Court: Pre-Dispute Employment Arbitration Agreements Must Meet 6-Point Test**

### ARMENDARIZ ARBITRATION AGREEMENT REQUIREMENTS EXTENDED TO CLAIMS FOR WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

#### *Review Your Company's Arbitration Agreements Immediately*

On February 27, 2003, the California Supreme Court, in Little v. Auto Stiegler, issued a decision on the enforceability of mandatory, pre-dispute employment arbitration agreements. In particular, Auto Stiegler held that an employee who brought a lawsuit for wrongful termination would be required to arbitrate the claims only if the arbitration agreement met the minimum requirements set forth in the earlier California Supreme Court case of Armendariz v. Foundation Health Psychare Services, Inc. As you may recall, Armendariz ruled that, in order for statutory claims to be forced into arbitration in California, a mandatory pre-dispute employment arbitration agreement must not be deemed “unconscionable or contrary to public policy.” As such, the agreement, at a minimum, must enable employees to effectively prosecute their claims in an arbitration forum and meet the following six requirements:

1. The agreement must provide for a neutral arbitrator;
2. The agreement must not limit the type or amount of remedies that an employee could recover, including punitive damages or attorneys’ fees;
3. The parties in arbitration must have an opportunity to conduct “adequate discovery.” Such discovery, while permitted to be “something less than the full panoply of discovery” that would otherwise be available, must provide the parties with discovery sufficient to adequately arbitrate their claims;
4. The arbitrator must issue a written arbitration decision that reveals the “essential findings and conclusions” on which the award is based, so as to allow for judicial review of the arbitration awards;
5. Employees cannot be required to bear any type of expense that the employee would not have been required to pay if the dispute had been heard in a court of law or to pay “costs greater than the usual costs incurred during litigation.” As a result, the employer will be required “to pay all types of costs that are unique to arbitration,” including the arbitrator’s fee; and

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6. As a general rule, the arbitration agreement cannot be a “one sided” agreement that compels the employee, but not the employer, to arbitrate his/her claims. Instead, the arbitration agreement should contain a “modicum of bilaterality,” thus requiring that claims of both the employee and the employer be submitted to arbitration. The exception to this bilateral rule is that an employer can exclude from arbitration certain of its claims if there exists “at least some reasonable justification for such one-sidedness based on ‘business realities.’”

In sum, Armendariz held that employers could require employees, as part of the mandatory employment arbitration agreement and as a condition of employment, to submit to arbitration their state and federal statutory claims of discrimination. Now, Auto Stiegler extends the Armendariz requirements to employees’ claims for wrongful termination in violation of public policy.

In light of Auto Stiegler, all employers in California should review their mandatory employment arbitration agreements to ensure that these agreements are fully consistent with the Court’s ruling. As such, we encourage you to call your SFSSW attorney at (310) 201-4700 to discuss this recent decision and its impact on your Company's operations.