

One-Sided Employment Arbitration Agreement Unconscionable, Court of Appeal Rules

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In *Compton v. Superior Court*, the [Court of Appeal, Second Appellate District](#), ruled that an arbitration agreement that the employer required an employee to sign as a condition of employment was unconscionable — and therefore unenforceable — because its terms were asymmetrical in the extreme, favoring the employer over the employee.

Among other things, the arbitration agreement required the parties to arbitrate common law contract and tort claims, statutory discrimination claims, and claims for violation of statutes and/or regulations. However, the arbitration agreement excluded workers compensation and unemployment benefit claims. It also excluded injunctive or equitable claims arising from alleged unfair competition and trade secret or confidential information disclosures.

In other words, the arbitration agreement applied solely to claims that the employee was likely to assert against the employer — with the exception of workers compensation and unemployment benefit claims, which cannot be arbitrated under any circumstances, since they are subject to separate, statutorily-established adjudicatory agencies.

However, the arbitration agreement did not apply to those claims most likely to be asserted by the employer — e.g., unfair competition and trade secret claims. As the Court noted,

By compelling employees to arbitrate the claims they were most likely to bring, while retaining for itself the right to litigate those claims it was most likely to bring, the employer created an essentially unilateral arbitration agreement.”

But the one-sidedness did not end there. The agreement also provided for a one-year time limit to demand arbitration that was substantially shorter than the statutory limitations period for many claims covered under the

agreement, and indeed could potentially frustrate the ability of employees to exhaust administrative remedies, since the process for doing so could take well over a year.

Furthermore, while stripping employees of the statutory limitations period, the employer retained for itself the ordinary 4-year and 3-year statutory limitations periods for unfair competition and trade secret violations, respectively. Finally, the arbitration agreement appeared to suggest that the arbitrator had the discretion to decline to award attorney fees to employees for violations of the Labor Code, whereas the fee provisions under the Code are mandatory.

This substantive one-sidedness, together with “procedural unconscionability” that accompanied the execution of the contract — i.e., the fact that the employee was rushed into signing the agreement along with twenty other documents, was never told that she was signing an arbitration agreement, and never had any forms explained to her — rendered the agreement unconscionable and unenforceable.

The case teaches us that employers should beware of the potential dangers of crafting employment contracts that are inordinately favorable to the employer. Rather, employers would be well-advised to consult an attorney who can review their employment contracts and advise them as to whether they comply with the principles discussed by the Court in Compton.

Please contact the author with any questions you may have about the issues addressed in this article.

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