

THE MARKET:
S&P 500
10.13
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1,468.36

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101.05
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13,264.82

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L-8 THE RECORD

ASK A LAWYER

Arbitration can't limit employee's range of remedies

Q. What does an arbitration clause in an employer/employee contract need to contain in order to be enforceable in New Jersey?

New Jersey has a strong public policy in favor of arbitration, so courts will enforce valid arbitration clauses in the employment context. To be valid and enforceable, the arbitration clause must apply to both parties and cannot limit an employee's remedies. The arbitration agreement should specify those claims that are subject to arbitration. Finally, the arbitration agreement should be signed by both the employer and the employee and both parties should keep copies of the agreement.

For the agreement to satisfy the requirement that it applies to both parties, it must require both the employer and the employee to arbitrate any claims. This may seem self-evident, but employers will sometimes attempt to have arbitration agreements that require employees to submit to arbitration, but that give the employer the selection of arbitration or court. Such an agreement, however, runs the risk of being found to lack mutuality and being held unenforceable.

An agreement to arbitrate is an agreement to the selection of a particular forum to resolve a dispute. It is not a vehicle for an employer to obtain an advantage over an employee. For that reason, an arbitration clause cannot limit an employee's available remedies. For example, an employee who prevails on a discrimination claim brought under the New Jersey

Law Against Discrimination would be entitled to the recovery of reasonable attorneys' fees. An arbitration agreement cannot not attempt to limit such a right or it risks being deemed unenforceable.

An arbitration agreement also needs to specify which claims are subject to arbitration. If appropriate, the arbitration agreement should specify "all claims" with an "including, but not limited to" section that identifies specific state and federal laws such as the New Jersey Law Against Discrimination, the Age Discrimination in Employment Act, etc.

Finally, the arbitration agreement should be signed by both the employer and employee and a copy of the agreement should be retained by the employer. It is not uncommon for employers to fail to sign the arbitration agreement and such an omission would probably not negate the agreement, but it is a more prudent employment practice to make sure the arbitration agreement is signed.

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