

## Management Alert

# There Is No Error in Judicial Review of Some Arbitration Awards

Courts have often addressed the enforceability of arbitration agreements and the reviewability of awards issued under those agreements. Courts generally refuse to review an arbitrator's legal and factual findings, but judicial review may be appropriate where "granting finality to an arbitrator's decision would be inconsistent with the protection of a party's statutory rights." *Moncharsh v. Heily & Blase*, 3 Cal. 4th 1, 32 (1992). In *Armendariz v. Foundation Health Psychcare Services, Inc.*, 24 Cal. 4th 83 (2000), the California Supreme Court noted that an enforceable arbitration agreement concerning statutory rights must minimally provide for "judicial review sufficient to ensure that arbitrators comply with the requirements of the statute at issue."

On April 26, 2010, in *Pearson Dental Supplies, Inc. v. Superior Court*, the California Supreme Court held that courts may review arbitration awards for legal error that results in preventing an employee from obtaining a hearing on the merits of a statutory claim. The Court also ruled, however, that arbitration clauses restricting the right to adjudicate claims in administrative forums are valid.

### Factual and Procedural Background

After Pearson Dental Supplies (Pearson) discharged a 67-year-old janitor, Luis Turcios, he filed an age-discrimination complaint with the Department of Fair Employment and Housing and sued Pearson on various claims, including a claim for age discrimination under California's Fair Employment and Housing Act (FEHA).

Pearson filed a motion to compel arbitration, contending that Turcios was bound by Pearson's arbitration agreement, entitled Dispute Resolution Agreement (DRA). The DRA provided that any covered dispute must be brought within one year from the date the dispute first arose or the employee first became aware of the facts giving rise to the dispute, and that any claim not timely submitted to arbitration would be deemed waived. The trial court granted Pearson's motion and referred the case to arbitration.

In arbitration, Pearson moved for summary judgment on the ground that Turcios's claims were time-barred because Turcios submitted them to arbitration more than one year after the date of his termination. Turcios argued that his right to arbitrate was tolled during the pendency of his civil action, pursuant to California Code of Civil Procedure section 1281.2, or alternatively that the DRA's one-year limitations period was unconscionable and not enforceable. The arbitrator nonetheless granted Pearson's motion.

Turcios then petitioned the Superior Court to vacate the arbitration award. The court concluded that the arbitrator made a clear error of law in interpreting the tolling provisions of section 1281.2, and held that the court was required to review the award to protect Turcios's statutory rights under the FEHA pursuant to *Armendariz v. Foundation Health Psychcare Services*. The court then found the arbitrator acted in excess of his jurisdiction and vacated the award.

On Pearson's appeal, the Court of Appeal found that the DRA's one-year limitation was not unconscionable and that any legal error by the arbitrator was immune from judicial review. (The arbitration agreement did not have any provision authorizing review for clear legal error, which would have been enforceable under *Cable Connection, Inc. v. DIRECTV, Inc.*, 44 Cal. 4th 1334 (2008))

## The Supreme Court's Decision

The Supreme Court granted review on two questions: (1) What is the standard of judicial review that a trial court should employ to ensure that an employee's FEHA antidiscrimination claim is adequately protected when arbitrated pursuant to a mandatory employment arbitration agreement? (2) Is a mandatory employment arbitration agreement restricting an employee from seeking administrative FEHA remedies unlawful?

As to the first question, the Supreme Court held that when an arbitrator's legal error bars an employee subject to a mandatory employment arbitration agreement from obtaining a hearing on the merits of a claim based on unwaivable statutory rights, the arbitrator exceeds his or her powers and the award may be vacated. In so holding, the Court also took issue with the nature of the arbitrator's decision, finding that it did not reveal the essential findings and conclusions on which it was based, as required by law. Thus, the Court found that the trial court did not err in vacating the arbitration award.

As to the DRA statement restricting the employee's right to seeking administrative remedies, the Court held that this statement was merely a statement of purpose and was not intended to have any preclusive effect. Moreover, while it would be unlawful to restrict an employee's right to pursue claims with an administrative agency for the purpose of the agency's prosecution of the claim, it is not unlawful to preclude a party's right to pursue claims with an administrative agency for the purpose of the agency's adjudication of the claim. Thus, a phrase limiting a party's right to an administrative forum is enforceable.

## What *Pearson* Means for Employers

*Pearson* declined the invitation to hold broadly that courts can correct arbitration awards for legal error. Rather, *Pearson* held, in a one-sided way, that judicial review of this sort is available to ensure an employee's right to arbitrate a statutory claim. Employers wishing to ensure protection for themselves against run-away arbitration awards thus cannot rely on *Pearson* but instead should follow carefully the guidance in *Cable Connection* to craft an arbitration provision that protects against renegade arbitrators.

*Pearson* generally supports the proposition that parties can agree to exclude both judicial and administrative forums with respect to the adjudication of claims. The decision will encourage employers to investigate the limits of their ability to prevent administrative agencies, as well as judges and juries, from adjudicating employee rights.

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