



# Half an Hour for Health Care

## *Part 4: Best Practices in Arbitration Agreements for Health Care Employers*

October 30, 2025

**Seyfarth Shaw LLP**

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# Speakers

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***Daniel Whang***  
***Partner***  
**Los Angeles**



***Galen Sallomi***  
***Associate***  
**San Francisco**

# Agenda

- 1 | Advantages and disadvantages of arbitration agreements in the health care context;
- 2 | Essential terms to include in arbitration agreements; and
- 3 | Roll-out considerations for new or revised agreements



A close-up photograph of a medical stethoscope with a black tube and silver chest piece, resting on a brown canvas medical bag. The bag has several metal buckles and straps. In the background, a white lab coat is visible, and a portion of a medical device with a dial is seen in the upper right corner.

# Pros and Cons of arbitration agreements

# Advantages of arbitration agreements

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- Reduce exposure to multi-plaintiff wage and hour suits
  - *Epic Systems Corp. V. Lewis* held mandatory arbitration agreements with class and collective action waivers are enforceable
  - Practical effect is that employers can prevent employees from bringing wage and hour class/collective actions altogether
- Faster, more efficient decisions
  - Quicker resolution
  - Less formal discovery
  - Less motion practice
- Confidentiality
- More predictable outcomes, as decisions are made by the arbitrator rather than unpredictable juries

# Disadvantages of arbitration agreements

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- Risk of legislative or legal change
  - Plaintiff’s counsel and California courts are hostile to arbitration
    - Asserting “headless” / representative-only PAGA actions
    - Unconscionability challenges
    - Disputing execution of agreement
  - “Me Too” laws limit arbitration of complaints that allege sexual harassment
  - California attempted to ban employers from mandating arbitration, but this attempt was preempted by the Ninth Circuit in *U.S. Chamber of Commerce v. Bonta*
- Potential for many individual actions instead of single class action
- Substantial arbitration costs
- Reduced chance of prevailing on a dispositive motion
- Limited appellate review
- Morale risk (unions/employees may perceive arbitration as “unfair”)
- PAGA claims cannot be waived



# Essential terms

## Enforceability Requirements

- Numerous requirements imposed by California courts in *Armendariz*
  - The employee can not bear any costs above that which he or she would have to pay in court.
  - Arbitration must provide for “adequate” discovery.
  - Provide for all types of relief that would otherwise be available in court.
  - Require a written arbitration award.
  - Provide a neutral arbitrator.
  - Mutual obligations to arbitrate claims.
  - etc...

## Class / Collective Action Waiver

- Main benefit of arbitration agreement is to waive class or collective actions
  - We strongly recommend including a comprehensive waiver of class and collective actions
  - Employer may still face liability for “representative” PAGA actions, but individual PAGA claims can be arbitrated.
  - California Supreme Court granted review of *Leeper v. Shipt*, which will decide whether a Plaintiff can bring a “headless” or representative-only PAGA claim.

# Roll-out considerations

- Determine scope of arbitration program
  - Which categories of employees will be covered?
  - Will the agreement be mandatory or voluntary?
- Develop a communication plan to explain the change to current employees.
  - Provide FAQs, trainings, and/or webinars.
  - Focus on fairness, neutrality, and access to relief
- Integrate arbitration agreement with existing policies and agreements
  - *E.g.*, collective bargaining agreements, staffing agency contracts, travel nurse contracts, etc..

## Consider How to Prove Employees Signed the Agreement

- Increasingly, Plaintiffs are challenging the validity of the signature on the arbitration agreement.
- If employee challenges the authenticity of the signature, the employer must present evidence (in the form of a declaration and/or witness testimony) that
  - the employee signed the agreement; and
  - the employee understood they were signing an arbitration agreement.

# Upcoming *Half an Hour for Health Care Sessions* (kept if needed)

Placeholder (if needed)





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**For more information please contact:**

**Daniel Whang**

Email: [dwhang@seyfarth.com](mailto:dwhang@seyfarth.com)

Phone: (310) 201-1539

**Galen Sallomi**

Email: [gsallomi@seyfarth.com](mailto:gsallomi@seyfarth.com)

Phone: (415) 732-1148