

## **Mandatory Arbitration of Wage and Hour Disputes Upheld But With Major Changes**

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By Judd Lees

The Washington Court of Appeals recently enforced mandatory arbitration of wage and hour disputes under an employment contract and granted the employer's motion to stay litigation pending arbitration. However, the Court found two provisions "unconscionable" and severed them from the agreement in *Walters v. A.A.A. Waterproofing, Inc.* The two provisions at issue required that: (1) the loser pay the winner's attorneys' fees and (2) the arbitration for the Washington employee take place in Denver, Colorado. With regard to the first requirement, the Court noted that attorneys' fees are only available to prevailing employees under state law (not prevailing employers) and that this contracted provision would therefore deter employees from pursuing their statutory wage and hour rights under the agreement. The second provision was found similarly unenforceable based on the costs associated with the out-of-state forum. The Court therefore severed both provisions but affirmed the judicial stay on the trial court action pending arbitration.

The decision is good news for employers utilizing mandatory arbitration to resolve employment disputes and also provides guidance regarding the nature of these mandatory arbitration provisions. To the extent the arbitration provision presents hurdles to an employee which he or she does not face in pursuing statutory claims in court, Washington courts have not hesitated to nullify those provisions.