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Arbitration Policies: Worth a double-check

Plaintiffs' lawyers usually hate arbitration. That's why some companies have arbitration policies for employee disputes—thin the ranks of lawyers willing to sue. The trick is writing your arbitration policy so that it's enforceable.

In *Datamark*, an employee challenged her employer's arbitration policy because it had a huge hole. It was written so that the company could back out of its promise to arbitrate disputes by changing or revoking the policy just before an employee filed a claim. The policy said the company could revoke or change it at any time without notifying employees. Worse still, these changes would apply to all employee disputes going forward. Good argument under Texas law.

The Texas court of appeals sided with the employee. The company had banked on its arbitration policy to put the dispute in front of a neutral arbitrator. Instead, the company got stuck with an employee-friendly El Paso jury. And it was on a pregnancy discrimination claim to boot.

A few tweaks to the policy would have landed the employee in arbitration. Back in 2002, the Texas Supreme Court approved of Halliburton's arbitration policy that let the company revoke or change it. The difference is that Halliburton's policy promised to give employees ten days' written notice of any changes. Any claims filed during those ten days would be resolved using the old policy. Halliburton got it right; so can everybody else.

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Arbitration

Disability Discrimination

Disparate Treatment

Pregnancy Discrimination