

Mini-White Paper –

Alternate Dispute Resolution (ADR) The Question of Arbitration

With the advent of the 2001 Supreme Court ruling, alternate dispute resolution's (ADR's) and mediation/arbitration agreements are becoming a popular way to deal with employee related matters that would normally cost the company thousands of dollars in litigation fees. The case that was recently decided on by the United States Supreme Court held that arbitration agreements in most contracts of employment (excluding contracts of transportation workers) are enforceable under the Federal Arbitration Act (.05).

Arbitration agreements have existed for many, many years. In most cases such agreements are prevalent in unionized workforces. Other companies have established alternate methods of handling internal disputes with their employees. We have Peer Review Processes, Internal Conflict Resolution processes, and many others under different headings and names. Because of their gain in popularity, many companies are quickly jumping on the bandwagon to create, and establish such a process in their companies. But, as with any process, there are many things to consider and this should not be taken lightly.

One of the most important things for a company to consider when deciding to implement an ADR is the Company's culture. It is extremely critical to any organization that processes and systems implemented build, motivate, and encourage morale, and employee involvement and communication.

Secondly, there are many types of arbitration that exists. One must become educated on the processes that are available. For example, is your process considered "binding"? If so, then do you understand the implications associated with instituting a binding agreement within your company. Or, do you want to implement "compulsory arbitration which forces employees to accept ADR.

Other factors that need to be considered are who is the arbitrator. The least expensive way is to train your managers and supervisors to be fair enforcers of the process. But who gets to define "fair"? Another method is to hire an outside arbitrator. This can be expensive as most are charged a fee by the hour. A full day's session of arbitration could cost as little as \$500 to several thousand dollars. Some fees are tied to potential recovery and then other fees such as additional expenses and administrative costs are also included.

The one primary reason and probably the most important of all is the affect the agreement will have on employees. When deciding which policies and procedures to rollout, we have to be cognizant of the effect on employees. Keeping in mind that our employees are our greatest resource. What message are we sending when we implement such a policy AND is it necessary. By having an outside arbitrator involved in our process, have we established yet another "consultant" in the organization.

I think ADR's are a fantastic way to resolve inner-organizational conflict. I also believe that, as with any policy or procedure, careful thought must be taken to ensure that this is the right method, control, and device to positively impact the workforce of Mingleorffs Inc. As revealed in the Human Resources Utilization Audit, our employees are currently experiencing some degree of low morale. We want to be able to build up the relationship that exists between employees and their managers/supervisors – not

add another layer. I think the establishment of the Human Resources function is a step in the right direction. Employees like to “feel” that they have a voice and that someone will listen – and respond. That doesn’t mean that we respond the way they would like – it simply means that we take a look at the issue and based on the Company’s vision, values, and mission statement, appropriately respond to the situation. It means that we give our managers and supervisors the techniques necessary to build the people; and in turn the people will build the company and produce the profitability necessary to extend into the future.

In summary, I firmly believe that introducing a policy such as this one AT THIS TIME, would only serve to produce a negative (not positive effect) on the organization. I believe with careful thought and planning, we can, however, put together a dispute procedure that is fair, motivating, and that consistently and fairly administers the policies of the Company according to our values and our mission.

Below is a table on some thoughts pulled together from other sources on the advantages and drawbacks of arbitration agreements:

Advantages of Arbitration	Drawbacks to Arbitration
Cost	Arbitrators are usually NOT lawyers as may be less likely to follow prevailing laws and compelling legal arguments than to reach a decision based on overall perceived “fairness”
Time – Because arbitration usually proceeds much more quickly than court litigation (there is a limited opportunity for discovery, i.e. depositions, document searches, interrogatories, etc.	Arbitrators may be less receptive to technical procedural arguments that may be available to the employer in a court situation, such as timely filing and statute of limitation issues.
Arbitrators also may not have the authority to award punitive damages in some states	Arbitrators are more likely to give employees some relief rather than nothing at all, and reach a compromise verdict in close cases
Often arbitrators do NOT award attorney fees to the prevailing party	Arbitrators generally do not follow traditional evidentiary rules and are more inclined to allow any type of proof into evidence
More informal	Arbitrators are not required to state the reason for their decision
Provides more privacy to the parties than court litigation or administrative proceedings	No opportunity to dismiss claims by motion
Private resolution of alleged EEO violations also avoids risks of being viewed by local enforcement agencies as repeat offenders	Grounds for appeal are extremely narrow
Arbitrators less likely to be swayed by sympathy and prejudices than would a jury	From an employee relations perspective, it sends all employees the message that their immediate manager and/or supervisor is not a “final” authority and that they should avail themselves of this service whenever they disagree with their manager