

## Forced Arbitration In The Workplace: A Symposium

University of California, Berkeley School of Law ■ Thursday, February 27, 2014

### THURSDAY, FEBRUARY 27, 2014

7:30–9:00 a.m.                      **Registration & Continental Breakfast**                      **Centennial & Donor Lobbies**

9:00–9:15 a.m.                      **Welcome & Opening Remarks**                      **Booth Auditorium**

Terisa E. Chaw, Executive Director, The Employee Rights Advocacy Institute For Law & Policy  
Gillian Lester, Acting Dean, University of California, Berkeley School of Law (Boalt Hall)

9:15–10:00 a.m.                      **Overview & History: The Alternate Universe Of Forced Arbitration**                      **Booth Auditorium**

Joseph D. Garrison, Garrison, Levin-Epstein, Richardson, Fitzgerald & Pirrotti, PC  
Imre Szalai, Loyola University New Orleans' College of Law

This session introduces the differences between civil litigation and forced arbitration of employment disputes, including a discussion of recent arbitration cases. Our speakers will also discuss the history of the enactment of the Federal Arbitration Act and the implications of the changing nature of judicial review of employment arbitration.

10:00–11:00 a.m.                      **Developing Standards Of Professional Responsibility For Arbitrators and Providers**                      **Booth Auditorium**

Stephen McG. Bundy, University of California, Berkeley School of Law (Boalt Hall) (Moderator)  
Cliff Palefsky, McGuinn, Hillsman & Palefsky  
Lindbergh Porter, Littler Mendelson, PC  
Barry Winograd, University of California, Berkeley School of Law, Arbitrator/Mediator

After *Gilmer v. Interstate/Johnson Lane*, there have been attempts to regulate the administration of non-union employment arbitrations, such as the Due Process Protocol, but standards of professional responsibility have been established in only a piecemeal fashion. This session explores a broader view of professional responsibilities for arbitrators and providers in mandatory arbitration proceedings.

11:00–11:15 a.m.                      **Break**

11:15 a.m.–12:30 p.m.                      **Disarming Employees? Examining Case Outcomes & Legal Representation In Employment Arbitration**                      **Booth Auditorium**

Alexander J.S. Colvin, Cornell University, School of Industrial & Labor Relations  
Mark Gough, Cornell University, School of Industrial & Labor Relations  
David Lipsky, Cornell University, School of Industrial & Labor Relations  
Jean Sternlight, University of Nevada, Las Vegas – William S. Boyd School of Law (Moderator)

Presenting new empirical research on employment arbitration outcomes and studies on employee access to (or inability to access) representation in arbitration, this panel of experts will explore whether employees fare better or worse at arbitration than in the civil justice system. They will also examine the difficulties workers face in securing legal representation and whether the lack of representation prevents workers from enforcing their workplace rights under the law.

12:30–12:45 p.m.	<b>Break</b> <i>Boxed lunches will be available for pick-up to attendees who pre-register by February 24.</i>	
12:45–2:00 p.m.	<b>Why The American Worker Is Losing Ground Luncheon &amp; Keynote Address By Robert B. Reich</b>	<b>Room 110</b>
	Robert B. Reich is the Chancellor's Professor of Public Policy at the University of California, Berkeley's Goldman School of Public Policy. Professor Reich has served in three presidential administrations, most recently as Secretary of Labor under President Bill Clinton. He was also a member of President Barack Obama's Transition Economic Advisory Board and is a co-founding editor of <i>The American Prospect</i> magazine. He received his B.A. from Dartmouth College, his M.A. from Oxford University where he was a Rhodes Scholar, and his J.D. from Yale Law School. Professor Reich's most recent work includes the documentary <i>Inequality For All</i> (2013), an exposé on America's widening income gap.	
2:00–2:15 p.m.	<b>Break</b>	
2:15–3:30 p.m.	<b>The Burgeoning Jurisprudence Of Arbitration: Federalism, Preemption &amp; Displacement Of State Contract Law</b>	<b>Booth Auditorium</b>
	Sarah Belton, Public Justice, PC (Moderator) F. Paul Bland, Jr., Public Justice, PC Christopher R. Drahozal, University of Kansas School of Law	
	In cases like <i>AT&amp;T Mobility LLC v. Concepcion</i> and <i>American Express Co. v. Italian Colors Restaurant</i> , the United States Supreme Court has greatly expanded the jurisprudence of the Federal Arbitration Act (FAA). This session will explore how, if at all, the FAA constrains or displaces legal principles of state contract law. The panel will include a discussion about the impact of recent judicial decisions on longstanding principles of contract interpretation and on the use of the unconscionability doctrine to invalidate forced arbitration clauses.	
3:30–3:45 p.m.	<b>Break</b>	
3:45–5:00 p.m.	<b>Emerging Legal Issues In Forced Arbitration: Collective Rights &amp; Retaliation In The Workplace</b>	<b>Booth Auditorium</b>
	Catherine Fisk, University of California, Irvine School of Law Michael Z. Green, Texas A&M University School of Law Michael Rubin, Altshuler Berzon, LLP (Moderator)	
	Challenges to enforcement of forced arbitration provisions have become increasingly difficult with the United States Supreme Court's recent decisions on the Federal Arbitration Act. Our speakers will discuss emerging issues that employees face when challenging the validity of forced arbitration provisions, including class arbitration waivers, employees' rights to concerted activity under the National Labor Relations Act, and the use of retaliation analysis as a check on forced arbitration of employment disputes.	
5:00–5:30 p.m.	<b>Concluding Remarks: The Role Of The U.S. Equal Employment Opportunity Commission</b>	<b>Booth Auditorium</b>
	Jenny R. Yang, Commissioner, U.S. Equal Employment Opportunity Commission P. David Lopez, General Counsel, U.S. Equal Employment Opportunity Commission	
	Our speakers will discuss how mandatory arbitration agreements and class waivers affect the enforcement of federal employment civil rights laws. One of the priorities identified in the Equal Employment Opportunity Commission's Strategic Enforcement Plan for FY2012-2016 is <i>Preserving Access to the Legal System</i> . The speakers will discuss what role the Commission might play to better preserve access to the legal system, particularly the impact that recent Supreme Court decisions on mandatory arbitration and class waivers may have on the Commission's systemic enforcement program.	
5:30–7:00 p.m.	<b>Reception</b>	<b>Warren Room</b>

