Arbitration Pros and Cons

The advantages and disadvantages of using arbitration as a method to resolve a legal dispute are arguably in the eyes of the beholder. For this reason, many of the items in the list below appear both as pros and as cons. However, the list below explains some of the general views of arbitration, both positive and negative, along with how a party’s perspective can play into the equation.

Arbitration Pros

- **Cost:** Historically, arbitration has often been seen as a cheaper way to resolve disputes, on average, than litigating in court. However, this is not always the case, as described in the Cons section below.
- **Speed:** With some exceptions, arbitrations tend to follow more specific and defined timelines toward resolving a dispute, and arbitrators do not always face crowded work and caseloads, resulting in quicker final decisions.
- **Fairness:** Often arbitrators are selected by agreement of both parties, by a third party arbitration service, or via an outlined method where input is allowed from both parties. This means that in many cases, no single party controls who the arbitrator (or arbitrators) will be.
- **Finality:** For the most part, it is very difficult to appeal arbitration rulings, even if glaring mistakes have been made by an arbitrator. This finality can be a positive factor in relation to ending a dispute, one way or the other, and allowing the parties to move on.
- **Simplified procedures:** Litigation can involve mounds of paperwork, multiple hearings, depositions, subpoenas, and similar processes. An arbitration may eliminate some or many of those time-consuming and expensive tools of litigation.
- **Confidential:** Arbitration hearings do not take place in open court and transcripts are not part of the public record. This can be very valuable for parties in some cases.

Arbitration Cons

- **Cost:** Surprisingly, the cost factor can also appear on this list as a "con" because arbitration does not always reduce the costs of resolving a legal problem. This is because arbitration can vary in complexity and can take many forms, some of which may actually be more likely to increase the costs versus litigation. As one example, arbitrations can be binding or non-binding. In non-binding arbitrations, the final decision or award in the case is not "binding" and the parties are free to take their issue back to court, essentially adding the cost of litigation to that of the prior arbitration.
- **Fairness:** Consumers may have legitimate concerns about the fairness of being dragged into arbitration over what might otherwise be a minor issue that could be resolved in small claims court. Also, companies favoring arbitration may be more familiar with specific arbitrators, as well as the process in general.
- **Speed:** Just like they aren’t always cheaper, arbitrations are not necessarily always faster than litigation. This is particularly possible in cases with multiple parties, multiple arbitrators, and complicated legal disputes.
- **Location:** Within the same small print in a contract that can require consumers to arbitrate their issues, there can also be language specifying exactly where an arbitration will take place. This location can sometimes be very inconvenient to the average consumer, as it could even be in another state, raising the cost and requiring time off from work.
- **Finality:** As noted above, it is very difficult to appeal arbitration rulings, even if an arbitrator has made a blatant mistake. Although not common, this can sometimes result in what may be seen as an unfair result (certainly from the losing party’s perspective!), with only a small chance that a court can step in to correct it.
• **No jury**: From most consumers’ and individuals’ points of view, having a jury of their peers is an important right not easily given up. Arbitration does away with juries entirely, leaving matters in the hands of an arbitrator, who essentially plays the role of both judge and jury.
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