

**BENEFITS AND DETRIMENTS
OF
ARBITRATION OF STATUTORY CLAIMS VS TRADITIONAL LITIGATION
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Item	Litigation Benefits	Litigation Detriments	Arbitration Benefits	Arbitration Detriments
Expense	Plaintiff attorneys must weigh the prospect of commencing time-consuming litigation when considering suit.	Litigation is often expensive. It may cost \$25,000+ to get a case dismissed. It could cost \$100,000+ through trial in a complex case.	Arbitration is usually far less expensive. This removes the “blackmail” aspect of litigation. (“You will have to spend \$25,000 in legal fees, so let’s settle for \$20,000”)	Plaintiff attorneys invest their time in a case. Arbitration requires less of an investment.
Discovery	The Defendant can learn nearly everything about a Plaintiff’s case. Sometimes, a Plaintiff must forfeit his/her case because of an unwillingness to give information.	Discovery battles are often the source of high legal fees.	The expense is reduced because there are fewer fights over producing information. The plaintiff obtains less information about the company's operations.	The company does not learn as much about the Plaintiff’s case. “Under the table” employment may never be discovered. Surprise testimony may occur at trial. Discovery can be provided for in a good arbitration policy, but it will not have the same teeth as a judge with contempt power.
Summary Dismissal	Employers obtain dismissal in 40-60% of all cases after discovery because of legal defects. Other cases are so weakened by motions that settlement follows.	It may cost \$5000-10,000 to prepare the briefs seeking dismissal.		Whereas judges must dismiss some cases to manage their dockets, arbitrators welcome the billings they obtain for conducting a hearing. There is almost no prospect of getting a case dismissed before the arbitration hearing. Plaintiffs know that every case will “go to trial.”

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Decision Maker	<p>If a jury goes wrong, a judge can order that a verdict be set aside. In rare occasions, juror prejudices support the defense. e.g.:</p> <ul style="list-style-type: none"> • Plaintiffs with psychiatric history • Interracial relationships • Assuming Plaintiff's workload as an ADA accommodation. 	<p>The judge is assigned by blind draw, and the parties cannot control the assignment of the judge.</p> <p>Juries are intellectually lazy and often decide issues on the basis of emotion or on the basis of their own experiences rather than by deliberately applying facts to the law. (EG: Your policies are measured against GM's, because a juror works there; A juror decides there is age discrimination in this case, because it is similar to his brother's situation.)</p>	<p>There is a limited ability to pick the decision maker by striking unfavorable arbitrators from the panel.</p> <p>Arbitrators will be somewhat more savvy about business matters than most jurors. It is harder for Plaintiff to fool or trick an arbitrator than it is to mislead a jury.</p>	<p>Because a party can strike arbitrators from the prospective panel there is an economic incentive to decide close to half of all cases for Plaintiffs. (Yet, in our experience 80-90% of all cases are patently frivolous.)</p> <p>Some arbitrators are in that field because they were not successful attorneys (and thus may not be that bright).</p> <p>Arbitrators have no fear of being reversed on appeal, and accordingly decide cases on "fundamental fairness" grounds rather than following the law.</p>
Evidence	<p>At a trial, strict rules of evidence will be followed, and a party has appellate rights if there is an error. Normally, the company uses evidentiary rules to keep out the Plaintiff's evidence.</p>	<p>Sometimes, the rules of evidence keep out the company's evidence too.</p>		<p>Arbitrators tend to let all of the evidence in and then sort out admissibility issues later. However, once heard, the damage is done. (You can't un-ring a bell.)</p>

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Mediation/ Pre-Trial Settle ment	Cases in Michigan Courts must be evaluated by a panel of three attorneys. Often, this leads to a reasonable settlement, or lets the plaintiff know the case has no value. If a Plaintiff rejects the evaluation, and proceeds to trial without success, he/she must pay the Defendant's legal fees from the point of rejection as a "sanction".	Occasionally, the evaluation tells the company that the case has high settlement value. (However, since most civil rights statutes contain an attorney fee provision anyway, "sanctions" don't pose the same pressure on Defendants to settle.)	The expense of mediation is avoided in arbitration. A complex case could cost \$5,000 to mediate. However, most of the time, the mediation brief tracks the dismissal motion/brief to save money.	Arbitration will proceed with no pressure to settle, because arbitrators bill their time for the hearing and writing the decision. Sometimes the company does not want pressure to settle. Sometimes, the company does want the system to pressure the plaintiff to settle.
Going to trial	Frequently trial is avoided because the court dismisses the case on the defendant's motion, or because mediation has settled a case.	Parties may prepare for trial several times before a court actually has time to try the case, thus wasting fees. (courts schedule more than one trial each day to assure that the court's time is used efficiently.) When trial does occur, it is more expensive than arbitration because of court formalities.	"Trial" is generally shorter and more to the point at arbitration.	Every case goes to "trial" in arbitration. Thus, the plaintiff gets to cross-examine the company's witnesses, and there is always the prospect of a significant verdict, though it will probably be smaller than a jury verdict for Plaintiff. Securing the attendance of witnesses can be more difficult in arbitration because the arbitrator does not have contempt powers.
Damages and Relief		Juries often render inflated awards.	Arbitrators usually render smaller awards	Arbitrators return employees to work more than courts.

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Appeal	<p>If a jury or judge rules against the employer, the trial court, the Court of Appeals and the Supreme Court can set aside the verdict/judgment for:</p> <ul style="list-style-type: none"> • Lack of evidence • Evidentiary errors • Erroneous refusal to dismiss on the basis of the law • Instructional errors 	<p>To appeal, one must usually post a bond equal to the amount of the verdict or judgment. This can require a defendant to pledge assets of the value of the verdict.</p> <p>Sometimes appeals are not successful, and end up increasing legal fees with no good result.</p> <p>The Plaintiff can also appeal, but that happens less often.</p>	<p>No appeal is possible if the Defendant wins the arbitration.</p>	<p>There is only a very limited basis to avoid an arbitration result: If the arbitral award violates public policy. Thus, if the arbitrator decides against the employer or cuts the wrong baby in half, there is almost no prospect of upsetting that result.</p>
Sanctions	<p>In a small but significant percentage of cases, the Court awards sanctions against the Plaintiff for bringing spurious claims or for rejecting mediation.</p>			<p>Sanctions are not available in arbitration.</p>