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The Arizona Supreme Court has ruled that the Arizona Uniform Arbitration Act cannot be used to enforce arbitration agreements between employers and employees. However, most employers should still be able to enforce such agreements.

## Arizona Supreme Court Refuses to Enforce Arbitration Agreement Based on the Arizona Uniform Arbitration Act

By Neil Alexander and Greg Coulter

In a surprise ruling, the Arizona Supreme Court has declined to enforce arbitration agreements made between an employer and its employees. The initial reading of the Court's ruling in *North Valley Emergency Specialists v. Superior Court* appears to be a significant blow to employers' ability to enforce arbitration agreements to resolve employment disputes. A detailed reading of the Court's decision, however, establishes that the ruling only addresses the application of the Arizona Uniform Arbitration Act ("AUAA") to arbitration agreements between employers and employees. The Court did not address the enforceability of those arbitration agreements based on Federal statute and common law. Consequently, the Court's narrow holding leaves employers with the ability to continue to enforcement arbitration agreements in Arizona.

### The Facts of the Case

Team Physicians of Arizona, Inc. ("TPA") employs physicians and physician's assistants to provide medical services to hospital emergency departments. Each physician and physician assistant employed by TPA executed an employment agreement containing an arbitration clause requiring "any and all disputes" arising out of the employment agreement to "be settled by arbitration." Despite that agreement, in 2002, employees left TPA and formed North Valley Emergency Specialists, LLC ("NVES") to engage in direct competition with TPA.

TPA filed a lawsuit in Superior Court against the individual physicians and physician's assistants and requested that the individuals be ordered to submit the matter to arbitration for resolution. When the individual defendants refused to submit to arbitration, TPA filed a motion to compel arbitration

under the AUAA. The trial court ruled that the AUAA was applicable to the agreement and ordered the parties to arbitrate the claims. At NVES's request, the Supreme Court reviewed the trial court's decision.

### The Supreme Court's Decision

The Arizona Supreme Court set about interpreting the provision of the AUAA that provides it has "no application to arbitration agreements between employers and employees or their respective representatives," A.R.S. § 12-1517. Although the Court acknowledged the strong public policy favoring arbitration, it found the plain language of A.R.S. § 12-1517 carves out an exception to that policy. The straightforward reading of that section specifically exempts employer-employee arbitration agreements from compulsory arbitration under AUAA. Accordingly, the Supreme Court found that the trial court mistakenly ordered that the matter proceed to arbitration.

In making its ruling, the Arizona Supreme Court specifically highlighted the narrowness of its ruling. In a footnote, the Court noted, "Neither party argued whether the arbitration clauses are enforceable as a common law contract term. Nor did they argue that an employer and employee can agree to engage in binding arbitration without the benefit of the statute. Therefore, we cannot decide whether these types of agreements are enforceable under the common law." In addition, in another informative footnote the Court found that TPA had failed to timely argue that the Federal Arbitration Act ("FAA") applied and preempted the AUAA. In supplemental briefing, TPA sought to argue that the case of *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001), held that all forms of employment contracts are subject to

compulsory arbitration under the FAA. Because that issue was not timely argued, it was waived and remains a viable argument supporting the enforceability of arbitration agreements between employers and employees that are not directly engaged in the transportation industry.

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### **Most Arbitration Agreements Still Enforceable in Arizona**

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Because of the narrow reach of the Supreme Court's decision, most arbitration agreements are still enforceable in Arizona. While an arbitration agreement may not be enforceable pursuant to the AUSA, they are still enforceable based on the FAA and common law contract principles. The Arizona Supreme Court specifically declined to address those issues and presumably arguments for enforceability based on the FAA and common law principles will be met with favor by the Courts. For employers who utilize arbitration agreements with their employees, the Supreme Court's decision does not nullify those programs. Employers, however, should give consideration to the formulation of those programs under the enforcement mechanisms left available after the Supreme Court's decision in *North Valley*. Specifically, arbitration agreements should include language that references the FAA and that recognizes the contractual nature of the agreements under common law.

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