

## Litigation - Arbitration - Agreement

### **What is an arbitration agreement?**

It is a written contract in which two or more parties agree to use arbitration, instead of the courts, to decide certain disputes. The arbitration agreement is ordinarily a clause in a larger contract. The disputes may be about the performance of a specific contract, a claim of unfair or illegal treatment in the workplace, a faulty product, or just about anything else. People are free to agree to arbitrate just about anything they could litigate.

### **Who decides whether there is an arbitration agreement?**

Courts decide whether the parties have an agreement to arbitrate, unless the arbitration agreement specifically says that questions about the "arbitrability" of the dispute are to be decided by an arbitrator.

### **What is a pre-dispute arbitration agreement?**

Parties frequently decide – when they are writing their contract (and long before any dispute arises) -- that should any disputes relating to the contract develop in the future they will have them decided by arbitration. This decision to arbitrate future disputes is contained in an "arbitration clause" in the agreement. If a dispute arises the parties cannot go to court; they must arbitrate their dispute.

### **What is a post-dispute arbitration agreement?**

People who have a current dispute may decide that instead of going to court and proceeding with their civil lawsuit they want to settle it by arbitration. Or, people who have gone to court may decide that they want to arbitrate their dispute instead of "dueling it out" in court. In either case, the parties to the dispute sign a written arbitration agreement that says they will arbitrate this specific, existing dispute.