Keeping It Out Of Court

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Ask any business owner and he or she will likely list costly litigation in their top five things to avoid. Nothing causes a drain on morale, resources and good talent like a contentious dispute in your workplace. The last thing any company needs is for a jury to tell them whether they were right in how they dealt with an employee.

Many companies have mandatory arbitration provisions in employment contracts and referenced in employee handbooks in an effort to try to control the litigation process. When used in conjunction with mediation (informal settlement negotiations conducted by an impartial mediator) and other forms of alternate dispute resolution (extra judicial efforts to get a matter resolved), it can be a very effective tool.

Similar to a lawsuit in a courtroom, arbitration involves a hearing in which both sides put on evidence and someone gets to decide the matter. For many businesses, the key difference is that there is no jury in arbitration. Instead, the matter is usually heard by a single neutral arbitrator who is likely a lawyer or a retired judge.

The general perception is that juries are unpredictable and easily persuaded by emotional arguments. Irrespective of whether this view reflects reality, most business owners would rather "take the emotion" and any related risk out of the case by having the matter settled in arbitration.

In the end, arbitration is another tool that business owners can use to control some of the risk and cost of litigation. It is commonly used by businesses of every size to make sure that any disputes that must be litigated are resolved quickly and quietly. Every business owner should at least weigh the merits of using an arbitration provision to govern employment disputes.

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