

An Empirical Assessment of Consumer & Employment Cases in Arbitration & Litigation

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SUMMARY OF THE REPORT

The popularity of arbitration as a forum for resolving disputes has been rising over the past decades. But there have been few empirical studies comparing the arbitration and litigation processes, mostly because of limited data availability. This executive summary provides the main points from a forthcoming full research paper that compiles, analyzes, and compares 67,119 consumer and employment arbitrations with 261,369 consumer and employment lawsuits in federal courts that terminated during 2014-21, and offers an update on analyses conducted in 2019 and 2020.² These consumer and employment arbitrations and litigations exhibited a similar outcome pattern – most disputes were settled and only a small portion of disputes terminated with decisions. However, when cases proceed to adjudication, claimants, who almost always were consumers and employees, were more likely to prevail in arbitration than in litigation. Furthermore, consumers and employees who won typically received higher monetary awards in arbitration than in litigation. Arbitration was also faster, on average, than litigation.

Key findings of the report are:

1. ***Consumers and employees who initiated cases are more likely to win in arbitration than in court.*** During 2014-21, consumers initiated and prevailed in 41.7% of arbitrations that terminated with awards compared to 29.3% of litigations that terminated with awards. Similarly, employees initiated and prevailed in 37.7% of arbitrations that terminated with awards compared to 10.8% of litigations that terminated with awards.
2. ***Consumer-claimants and employee-claimants typically receive higher monetary awards in arbitration than in litigation.*** During 2014-21, consumers who initiated and prevailed in arbitration were awarded an average of \$79,945 (\$20,356 in median) compared to an average of \$71,354

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² Pham, Nam D. and Mary Donovan. 2019. "Fairer, Faster, Better: An Empirical Assessment of Employment Arbitration." ndp | analytics; Pham, Nam D. and Mary Donovan. 2020. "Fairer, Faster, Better II: An Empirical Assessment of Consumer Arbitration." ndp | analytics.

(\$6,669 in median) in litigation. Similarly, employees who initiated and prevailed in arbitration were awarded an average of \$444,134 (\$142,332 in median) compared to an average of \$407,678 (\$68,956 in median) in litigation.

3. **Arbitration is, on average, quicker than litigation.** During 2014-21, consumers who initiated and prevailed in arbitration spent an average of 321 days (265 days in median) from initiation to termination of their claim compared to spending 439 days (315 days in median) in litigation. Similarly, employees who initiated and prevailed in arbitration spent an average of 659 days (623 days in median) from initiation to termination of their claim compared to spending an average of 715 days (578 days in median) in litigation.

Table 1.

Consumer-claimants and employee-claimants have better chances to win, receive higher monetary awards, and spend less time in arbitration than in litigation

	Arbitration	Litigation
Win rates		
Consumer-claimant prevailed	41.7%	29.3%
Employee-claimant prevailed	37.7%	10.8%
Amount awarded		
Consumer cases	\$79,945 (average) \$20,356 (median)	\$71,354 (average) \$6,669 (median)
Employment cases	\$444,134 (average) \$142,332 (median)	\$407,678 (average) \$68,956 (median)
Time to resolution		
Consumer cases	321 days (average) 265 days (median)	439 days (average) 315 days (median)
Employment cases	659 days (average) 623 days (median)	715 (average) 578 days (median)

This study covers arbitrations and litigations during 2014-2021 to include cases that terminated since the COVID-19 outbreak, which impaired business operations, limited courtroom activity, and changed the way Americans live and work. Since the onset of the pandemic, there has been a substantial increase in terminated arbitrations, with employment arbitrations in particular seeing a major increase in the number of arbitrations terminated with awards compared to pre-pandemic levels: employment arbitrations terminating with awards more than doubled compared to 2020, and employment arbitrations initiated by employees and terminating with awards more than tripled compared to 2020. The unprecedented level of arbitration activity while many courtrooms were closed might have affected the efficiency of the dispute resolution processes in 2020 and 2021. Despite that, the findings in this study are consistent with findings in our previous reports. The three main metrics continue to show that arbitration is better than litigation for consumers and employees. Consumers and employees have a better chance of winning and receiving higher monetary awards in

arbitration than litigation. In addition, arbitration allows consumers and employees to reach a resolution faster than litigation (which helps make it less costly than litigation).

METHODOLOGY

This report compiled arbitration data from two major arbitration service providers, the American Arbitration Association (AAA) and Judicial Arbitration and Mediation Services, Inc. (JAMS), and litigation data in federal courts to construct a large database to assess consumer and employment arbitration and litigation. Our analysis excludes consumer cases involving healthcare, insurance, and personal injury claims. Using arbitration and litigation terminated during 2014-21, we calculated and compared the win rates, award amounts, and time spent on consumer and employment disputes between arbitration and traditional litigation during the same time period. Our analysis focuses on consumer and employment disputes that terminated in awards for one prevailing party.

Arbitration Data. Our analysis of consumer and employment arbitration cases relies on two data sources – American Arbitration Association (AAA), the largest provider of employment arbitration services, and Judicial Arbitration and Mediation Services, Inc. (JAMS).

Our arbitration dataset consists of 67,119 consumer and employment cases terminated during 2014-2021. The data breakdowns are: 41,376 consumer arbitrations (36,241 from AAA and 5,135 from JAMS) and 25,743 employment arbitrations (18,285 from AAA and 7,458 from JAMS). In total, 8,588 cases were recorded as awarded, of which 7,141 had one prevailing party, with the remaining awarded to both parties or the prevailing party was unknown. Of these 7,141 cases, 2,902 were initiated and won by consumers or employees. When analyzing award amounts, cases with missing award values are excluded.

Since AAA provides data of arbitrations terminated within the past five years, we downloaded 2017-2021 data from the AAA website in February 2022 and merged it with 2014-2016 data that we downloaded from the AAA website in 2019. Similarly, we downloaded 2017-2021 arbitration data from JAMS and merged it with 2014-2016 data that we downloaded from the JAMS website in 2019. AAA and JAMS do not provide data for ongoing consumer and employment arbitration cases. We removed consumer and employment arbitration cases with missing data on the initiating party and/or outcomes. We removed duplicate cases based on the case ID to avoid double counting.

Litigation Data. Our analysis of litigation cases relies on 261,369 federal court cases that also terminated during 2014-2021. We downloaded litigation data from the Lex Machina portal in February 2022. Lex Machina is a database that collects and organizes federal court data from the federal courts' Public Access to Court Electronic Records (PACER) system. Our analysis excludes class actions and cases where the claimant was a government agency, as these claims are not comparable to private party consumer and employment arbitration. Additionally, a small number of cases terminated with a consent judgment was classified as "settled" instead of "awarded" cases because they embody settlements between the parties. Of the 30,795 awarded cases (defendant or claimant wins) identified in Lex Machina, claimants won 4,610 cases. Based on the names of the claimant and defendant, we identified 4,378 cases where the consumer or employee initiated the litigation and prevailed. Of these, 3,932 cases have monetary damage amounts. Due to missing data, there is a small discrepancy between the total number of cases used to analyze the award amount and the total number of cases used to analyze the duration from initiation to award.