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In today's legal landscape, understanding both the power and the limitations of mass arbitration is crucial. Mass arbitration has been employed as a strategy for giving major corporations a taste of their own medicine. Recent precedents suggest that it can succeed in recovering compensation and holding a company to task even when a consumer's or employee's ability to sue is restricted by prior agreements or internal policies. However, when done incorrectly, mass arbitration can lead to excessive fees and higher costs, without benefit to the claimant.

What Is Mass Arbitration?

If you work for a corporation, you may well have signed an arbitration agreement as part of your employee onboarding. As a consumer, you are often bound by agreements with

arbitration clauses when you accept terms of use for online accounts or apps such as Uber, Tinder, StubHub, and more. By clicking through and acknowledging those terms, you might be forced to [give up your right](#) to file a lawsuit in court against the company or

you might be forced to give up your right to file a lawsuit in court against the company or to participate in a class action lawsuit. Instead, you would have to resolve disputes through arbitration – a legally binding process that takes place outside the courtroom and can be very expensive. It centers around the use of a private arbitrator (a neutral third party) who is paid by the parties to act similarly to a judge by hearing each party's arguments and making a decision.

The right to agree that conflicts must be settled through arbitration stems from the [1925 Federal Arbitration Act](#), originally designated for intra-business use. Arbitration between two parties with equal power and resources can be a useful tool, allowing for the private resolution of conflicts with less time or resources than those needed for court proceedings and a trial. Corporations soon realized that they could impose arbitration clauses upon less powerful entities, forcing employees and consumers to accept their terms, often not realizing they are doing so. This can make it extremely difficult if not impossible to pursue their claims because of the cost of arbitration and because they cannot proceed as part of a group. In 2011, the Supreme Court case [AT&T Mobility LLC v. Concepcion, 563 U.S. 333](#), largely upheld this tactic by enforcing an agreement in consumers' cell phone contracts saying they could not participate in a class action. But savvy lawyers have fought back through mass arbitration. This is a strategy that involves filing multiple similar claims in arbitration together at once to leverage the strength of a group of legal claims, like a class action does. By filing many claims together, this creates a burden on the company that insisted upon the arbitration process, shifting the power dynamic back toward the consumers or employees.

Mass Arbitration vs. Individual Arbitration

Individual arbitration often pits individuals against powerful corporations. Unlike traditional court proceedings, arbitration [limits the rights of employees and consumers](#) by removing opportunities for discovery and appeal. Although arbitrators play a similar role to judges, they are not bound by the same rules. Arbitration is also kept private, allowing companies to settle claims of fraud, harassment, or bad behavior without negative press. In addition, arbitration fees often make filing a claim more costly than any potential recovery.

As an example, imagine you are an employee who is owed overtime pay in the amount of \$475. If you are bound by an arbitration clause, it will likely cost you more than that amount to present your claim, once you account for arbitration filing fees and possible attorney's fees. The company you work for will also pay fees but can afford to do so more than the employee with fewer resources at their disposal. Individual arbitration banks on this imbalance in the power dynamic to dissuade employees and consumers from following through on their claims.

Mass arbitration turns the tables on companies to uphold consumer and employee rights. In a mass arbitration effort, each employee who is owed overtime pay can file their claim together at the same time. In doing so, they put the company on the hook for thousands or even millions of dollars in arbitration fees at once, similar to what they might face from an in-court lawsuit. Meanwhile, the claimants themselves are represented by a firm that is able to shoulder the upfront fees while seeking to recover a higher amount in the long run from a settlement. Bringing people with similar claims together creates an economy of scale, decreasing the administrative cost and easing the burden of the individual claimants.

Mass Arbitration vs. Class Action

A class action lawsuit is a legal process in which a group of people who have been harmed in a similar way by someone's actions come together to file one shared claim for compensation in a court of law. Class action lawsuits provide rights to plaintiffs that arbitration does not, such as allowing for the discovery process as well as the option to appeal.

In a typical class action lawsuit, proceeds are divided amongst plaintiffs, with exceptions made for those who have seen a disproportionately higher degree of harm. An example of a class action settlement is when a bank pays a settlement to all of its customers who paid unlawful overdraft fees. Everyone who is a class member may be awarded part of the settlement, but those who paid more in fees will likely receive a higher share than others.

Mass arbitration can provide a similar recourse for harmed people who are unable to join a class action lawsuit due to an arbitration clause, but who have similar claims. Unlike a class action lawsuit, in order to benefit from mass arbitration, the harmed people must generally affirmatively sign up to participate.

Do I Have a Case?

In order to see whether you can file an arbitration claim, you will need to look into your specific contract with the company to verify if you are bound by an arbitration clause. If you work in the private sector and are a non-union employee with a corporation, you may well be **bound by a mandatory arbitration clause** in the event of a dispute. Many consumers are also bound by arbitration clauses in the event that they suffer harm due to a company's practices, from false advertising to unlawful charges.

If arbitration is your only option, contact a law firm with experience in mass arbitration to see if there are others who may be able to join you in your claim. Mass arbitration has a much higher success rate than individual claims but comes with a high administrative cost and generally requires a minimum number of claimants. This number may differ depending on the specific arbitration firm that contracts with the company. Mass arbitration does not have a limit on the maximum of claims that can be filed at once, which means there may be hundreds or even thousands of other individuals who allege similar harm and can join the process.

Mass Arbitration Procedures

Mass arbitration is largely done through private companies like the American Arbitration Association (**AAA**) and the Judicial Arbitration and Mediation Services, Inc. (**JAMS**). The rules of each service differ, and working with a skilled attorney is crucial to ensure that the required procedures are followed appropriately to give your claim the best chance of success.

Companies often specify in their arbitration clauses which third party arbitrator service will be used, prior to any dispute being filed. When an arbitration claim is filed, both parties pay the arbitrator a filing fee in order to begin the proceedings. The amount of the fee differs based on the type of case, the arbitrator used, and the number of claims filed. The final decision of the arbitrator (or panel of arbitrators) is legally binding.

Consumer or workplace disputes filed under the AAA must involve at least 25 demands for arbitration filed at once to be considered "mass arbitration." Under the rules of

FEDARB, a minimum of 20 claimants must file together to be considered under its [ADR-MDL framework](#) for mass arbitration.

Are There Benefits to Mass Arbitration?

Mass arbitration can be both efficient and cost-effective compared to an individual claim, leveraging the power of collective action. Mass arbitration has recovered over [\\$300 million](#) for employees and consumers, much of which would never have been on the table due to the restrictive structure of individual arbitration agreements. Under mass arbitration, companies can also be incentivized to pay higher settlements to claimants in order to avoid the fee structure of arbitration.

The mass arbitration process has resulted in significant wins for consumer rights over the years. For instance, in 2021 Amazon received [over 75,000](#) arbitration claims alleging that their Echo devices had recorded consumers without their consent. In the wake of these claims, Amazon removed its mandatory arbitration clause from its terms of use. This way, consumers can once more file class action lawsuits, resetting the playbook and resulting in a significant check on corporate power.

Challenges and Criticisms of Mass Arbitration

While mass arbitration is a useful process for holding companies accountable for harm, it is not a silver bullet. At the end of the day, arbitration is still structured to take place on the defendant's terms. Some of the main pitfalls of mass arbitration include:

Companies Avoiding Fees

Companies that attempt to shirk paying filing costs change the rules of the game that they established. For instance, Uber and Family Dollar both sued their own arbitrators, alleging excessive fees compared to the settlement amounts that were being debated in arbitration. A recent Samsung mass arbitration claim resulted in the company refusing to pay arbitrator fees after being hit with over \$2.5 million in filing fees for two separate sets of claims, *Wallrich* and *Hoeg*—even after the consumers had paid their filing fees. This led the AAA to close the proceedings, depriving claimants of the opportunity to present their claims in arbitration. It may be only a matter of time before fee structures are further amended in order to benefit corporate interests once more.

High Fees and Costs

Mass arbitration involves prohibitively high upfront fees for many lower-dollar claims, limiting what kinds of claims are best suited to this type of recovery process. It often involves limited or no [discovery](#), which can mean the consumer or employee may not have access to critical evidence to support their claims, particularly ones that are factually complex like employment discrimination or sexual harassment cases. On the other hand, more straightforward cases like unpaid overtime claims hinge mostly on mathematical calculations for proof, and can thus be more easily pursued through mass arbitration.

Delays

Mass arbitration can take a long time when thousands or hundreds of thousands of claims are involved, which can delay results for claimants. For instance, JAMS

guidelines point out that the few hundred arbitrators it employs cannot reasonably work through 50,000 claims in a fair span of time, limiting the scope of mass arbitration as a tool for consumers.

Illegitimate Claims

Finally, critics argue that mass arbitration can become a tool of extortion, leading companies to settle simply because of the threat of high fees and not because of the legitimacy of the claims. Mass arbitration comes with the risk of frivolous claims being lumped into consideration in order to increase the overall cost to the corporation, thus de-legitimizing the process.

Choosing a respected law firm to represent you is necessary to increase the likelihood of all claims being thoroughly vetted so you can avoid penalties or possible legal action down the line. A mass arbitration law firm must have the resources to credibly discover, contact, investigate, and communicate with what can amount to hundreds or thousands of clients, as well as file each of their individual claims in the appropriate manner.

What Does the Mass Arbitration Process Look Like?

The mass arbitration process is typically structured based on guidelines from the arbitration company and may include the following steps:

1. **Initiating a mass arbitration:** By working with a qualified law firm, your claim will be filed under the appropriate guidelines and timelines set by AAA, JAMS, or another arbitration company, including filing the proper documents and paying the appropriate fees.
2. **Selecting arbitrators:** Each arbitration provider has specific rules and processes for selecting the specific arbitrator(s) who will hear the claim or claims.
3. **Evidence gathering:** There is usually a limited discovery process to investigate the legitimacy of the claims and defenses.
4. **Hearing:** Claims under certain amounts (for example, \$100,000 under FEDARB guidelines) will be held virtually. Compelling circumstances or higher penalty amounts may result in an in-person hearing.
5. **Award:** If the parties do not choose to settle in advance, you will receive a ruling determining the claim or claims. There is no guaranteed right of appeal with an award from arbitration.

How Long Does the Arbitration Process Take?

Mass arbitration typically takes less time than a case filed in court. When statutory damages are involved, most mass arbitration cases are decided in around a year, according to [FEDARB](#).

Notable Mass Arbitration Cases

Recent years have seen a wave of high-profile mass arbitration cases as consumers turn to law firms to protect their rights. Some claims include apps and services that have threatened consumer privacy by allegedly collecting sensitive, financial, or identifying information from their users. For instance, a mass arbitration case involving [Bumble](#) accused the dating app of violating the Biometric Information Protection Act (BIPA) by scanning user selfies. Meanwhile, tech giants Google and Meta have been accused of aggregating tax information from H&R Block in order to advertise

financial services to their users. Other claims involve hidden fees and higher costs passed onto consumers, like those filed against Spotify, Valve, Uber, [Amex](#), and Peloton.

What Should I Do If I Have a Mass Arbitration Case?

As companies attempt to block or circumvent high arbitration fees, change their policies, and generally escape liability for harm done, mass arbitration continues to be a complex and rapidly changing area of law. If you have been injured or have suffered adverse effects due to a company's actions, contact an arbitration lawyer to find out if you are eligible to join a class action lawsuit or if you are bound by an arbitration clause. If so, mass arbitration may be a viable path toward your recovery.

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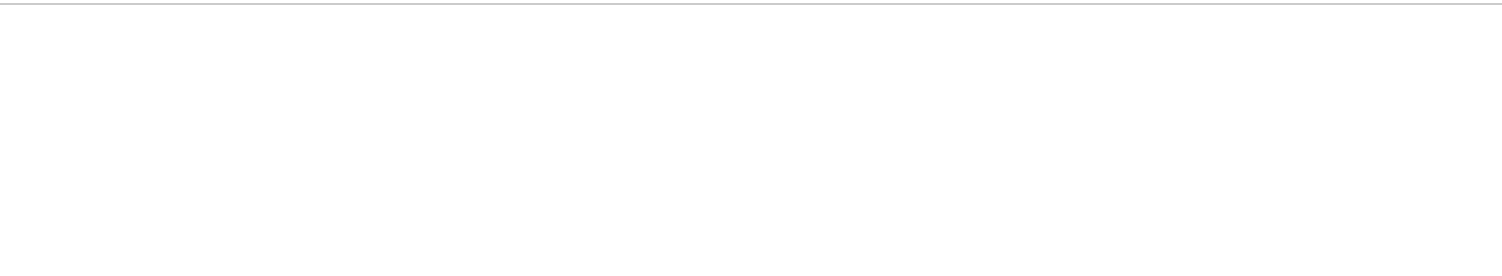
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