

Contents

Acknowledgments	vii
1 Workplace Justice in the United States: An Introduction	1
The Historical Development of American Workplace Justice	3
Plan of the Study	5
The Literature on Workplace Justice	6
Plan of the Book	14
2 Employment Arbitration	15
The Growth of Employment Arbitration	16
Reasons for Growth of Employment Arbitration	17
Encouragement by the Federal Government	20
Legislation on Employment Arbitration	31
The Pros and Cons of Employment Arbitration	32
Conclusions on the Law and the Literature	45
3 The Evidence on Employment Arbitration	47
Comparing Wins and Losses	47
Comparing Amounts Recovered	55
Comparisons of Cost and Time	58
Survey of Employment Arbitration	61
Conclusions	66
4 An International Perspective	69
International Standards on Termination of Employment	70
Termination of Employment in Various Countries	72
Comparison with U.S. Employment Arbitration	76
5 Judging the Merits of Terminations: Does It Matter Who Decides?	81
The Decision Makers and the Cases	84
Are There Differences Among Decision Makers?	87
Pairwise Comparisons of Decision Makers	93
Conclusions	143
6 Is Justice Weeping?	145
Summary	145
Conclusions	151
References	209
The Authors	221

Index	223
About the Institute	231

Tables

3.1	Studies of Employee Win Percentages in Employment Arbitration and State and Federal Courts	50
3.2	Employee/Employer Win Rates	54
3.3	Federal District Court Awards in Employment Cases, 1987–2	57
3.4	Respondent Characteristics	62
3.5	Employment Arbitrators’ Decision Rules as to Quantum of Proof	64
3.6	Employment Arbitrator Perceptions as to System Serving the Parties’ Interests	65
4.1	Summary of Termination of Employment Laws in Eleven Countries	74
4.2	Court Practices in Nine Countries	77
5.1	Summary of the Characteristics and Strength of the Case against the Employee	88
5.2	Likelihood of Overturning Termination across Decision Maker Types: Means and Standard Deviations	90
5.3	Likelihood of Overturning Termination across Cases: Means and Standard Deviations by Decision Maker	91
5.4	Percentage of Rulings Likely to be in Favor of the Employee across All Cases: by Decision Maker	92
5.5	Effect of Role of the Decision Maker on Likelihood of Overturning Termination	93
5.6	Pairwise Comparisons: Mean Differences between Labor Arbitrators and Employment Arbitrators Evaluating Statutory Claims	98
5.7	Pariwise Comparisons: Mean Differences between Labor Arbitrators and Employment Arbitrators with For-Cause Requirements	102
5.8	Pairwise Comparisons: Mean Differences between Labor Arbitrators and Peer Review Panelists	105

5.9	Pairwise Comparisons: Mean Differences between Labor Arbitrators and Jurors from Employment Discrimination Cases	109
5.10	Pairwise Comparisons: Mean Differences between Labor Arbitrators and HR Managers	111
5.11	Pairwise Comparisons: Mean Differences between Employment Arbitrators Evaluating Statutory Claims and Employment Arbitrators with For-Cause Requirements	114
5.12	Pairwise Comparisons: Mean Differences between Employment Arbitrators Evaluating Statutory Claims and Peer Review Panelists	116
5.13	Pairwise Comparisons: Mean Differences between Employment Arbitrators Evaluating Statutory Claims and Jurors from Employment Discrimination Cases	118
5.14	Pairwise Comparisons: Mean Differences between Employment Arbitrators Evaluating Statutory Claims and HR Managers	120
5.15	Pairwise Comparisons: Mean Differences between Employment Arbitrators with For-Cause Requirements and Peer Review Panelists	122
5.16	Pairwise Comparisons: Mean Differences between Employment Arbitrators with For-Cause Requirements and Jurors from Employment Discrimination Cases	124
5.17	Pairwise Comparisons: Mean Differences between Employment Arbitrators with For-Cause Requirements and HR Managers	126
5.18	Pairwise Comparisons: Mean Differences between Peer Review Panelists and Jurors from Employment Discrimination Cases	129
5.19	Pairwise Comparisons: Mean Differences between Peer Review Panelists and HR Managers	130
5.20	Pairwise Comparisons: Mean Differences between Jurors from Employment Discrimination Cases and HR Managers	132
5.21	Pairwise Comparisons: Mean Differences between Labor Arbitrators and Labor Court Judges	134
5.22	Pairwise Comparisons: Mean Differences between Employment Arbitrators Evaluating Statutory Claims and Labor Court Judges	135

5.23	Pairwise Comparisons: Mean Differences between Employment Arbitrators with For-Cause Requirements and Labor Court Judges	136
5.24	Pairwise Comparisons: Mean Differences between Peer Review Panelists and Labor Court Judges	137
5.25	Pairwise Comparisons: Mean Differences between Jurors from Employment Discrimination Cases and Labor Court Judges	137
5.26	Pairwise Comparisons: Mean Differences between HR Managers and Labor Court Judges	138
5.27	Percentage of Rulings Likely to be in Favor of the Employee, by Case and Decision Maker	139
5.28	Percentages of Jurors, Employment Arbitrators Evaluating Statutory Violations, and Employment Arbitrators with a For-Cause Requirement Issuing Different Findings	142