

# Employment Conciliation Clause 2

**In compliance with recent California Supreme Court case (Armendariz v. Foundation Health Psychcare Services, Inc., 24 Cal.4th 83 (2000))**

*[IMPORTANT NOTE: This conciliation clause is provided for information purposes only. ICC is not providing legal advice by providing this exemplar conciliation clause. In some states conciliation clauses must be written in a certain way to be legally binding. A visit with an attorney can confirm your commitment to avoid litigation, alert you to local requirements, and ensure the enforceability of a conciliation clause in your contract.]*

## MUTUAL ARBITRATION AGREEMENT FOR EMPLOYMENT

(1) I agree and acknowledge that \_\_\_\_\_ [insert name of company, school or organization] (“Company”) and I will utilize binding arbitration to resolve any disputes that may arise between us, as set forth more fully below.

(2) I agree and acknowledge that Company, including its affiliates, subsidiaries, and related entities, past, present, or which may be formed, and I will utilize binding arbitration as the sole and exclusive means to resolve all disputes which may arise out of or be related to my application for employment and/or employment, including but not limited to the termination of my employment and my compensation. The Company and I each specifically waive and relinquish our respective rights to bring a claim against the other in a court of law, and this waiver shall be equally binding on any person who represents or seeks to represent me or the Company in a lawsuit against the other in a court of law. Both I and the Company agree that any claim, dispute, and/or controversy I may have against the Company (or its owners, directors, officers, managers, employees, or agents), or the Company may have against me, will be submitted to and determined exclusively by binding arbitration under the Federal Arbitration Act (“FAA”). Additionally, the binding arbitration will be determined in conformity with the procedures of the California Arbitration Act (“CAA”) (Code of Civil Procedure §§ 1280 et seq., including Section 1283.05 and all of the CAA’s other mandatory and permissive rights to discovery); however, a court may not refuse to enforce this agreement or stay the arbitration proceeding under Code of Civil Procedure § 1281.2(c).

(3) The parties agree the FAA and/or the CAA apply to this Agreement. Included within the scope of this Agreement are all disputes, whether based on tort, contract, statute (including, but not limited to, any claims of discrimination, harassment and/or retaliation, whether they be based on the California Fair Employment and Housing Act, Title VII of the Civil Rights Act of 1964, as amended, or any other state or federal law or regulation), equitable law, or otherwise. The only exceptions to the requirement of binding arbitration shall be for claims arising under the National Labor Relations Act, which are brought before the National Labor Relations Board, claims for medical and disability benefits under the California Workers’ Compensation Act, Employment Development Department claims, or as may otherwise be required by state or federal law when not preempted by the FAA. But nothing herein shall prevent me from filing and pursuing proceedings before the California Department of Fair Employment and Housing, or the United States Equal Employment Opportunity Commission or similar state or local agency (although if I choose to pursue a claim following the exhaustion of such administrative remedies, that claim would be subject to the provisions of this Agreement). By this binding arbitration provision, both the Company (or its owners, directors, officers, managers, employees, or

agents) and I give up our respective rights to trial by jury of any claim I or the Company (or its owners, directors, officers, managers, employees, or agents) may have against the other that may arise out of or be related to my employment.

(4) All claims brought under this Agreement shall be brought in the individual capacity of myself or the Company.

(5) This Agreement will not be construed to allow or permit the consolidation or joinder of other claims or controversies involving any other employees, or permit such claims or controversies to proceed as a class, collective, private attorney general, or similar representative action. By signing this Agreement, I am agreeing to waive any substantive or procedural rights I may have to sue on a class, collective, representative, or private attorney general basis. No court or arbitrator will have the authority under this Agreement to order a class, collective, or representative action to proceed in arbitration.

(6) This Agreement will not be construed to allow or permit claims brought on behalf of any state or government as a private attorney general, including claims under California Private Attorneys General Act of 2004. By signing this Agreement, I am agreeing to waive any substantive or procedural rights I may have to sue on as a private attorney general. No court or arbitrator will have the authority under this Agreement to order claims brought on behalf of any state or government as a private attorney general, including claims under California Private Attorneys General Act of 2004, to proceed in arbitration.

(7) Both Company and I agree that a court of competent jurisdiction will be the sole determiner of any disputes regarding whether this Agreement allows for class, collective, or representative arbitration. A court of competent jurisdiction will decide all issues concerning the enforceability of the class, collective, or representative waivers herein. The parties agree and stipulate an arbitrator has no authority or jurisdiction regarding these issues.

(8) Should a court determine that the prohibition on class, collective, private attorney general, or representative actions is invalid for any reason, both Company and I waive any right to arbitration of the class, collective, private attorney general, or representative actions at issue and instead agree and stipulate that such claims will proceed in court and not before an arbitrator, but only after any claims subject to this Agreement are fully arbitrated. While claims subject to this Agreement are being arbitrated, both Company and I agree to stay all other claims, including any class, collective, representative, or private attorney general claims.

(9) A party wishing to initiate arbitration must notify the other party in writing by hand delivery or certified mail. The notice must (a) identify the party requesting arbitration by name, address, and telephone number; (b) describe the facts upon which the claim is based, the persons involved, the date and location of any occurrences giving rise to the claim, and the law(s) allegedly violated; and (c) describe the remedy requested. Notice to the Company must be sent to [insert name and address of Company]. Notice to Individual must be sent to Individual's most recent residence address reflected in the Company's records.

(10) Before submitting a dispute to arbitration, the parties shall endeavor to settle the dispute by mediation. The parties shall use the services of Ambassadors of Reconciliation d/b/a Institute for Christian Conciliation, unless both parties agree to use another mediation service. The organization may be contacted at [icc@aorhope.org](mailto:icc@aorhope.org). Mediation shall be completed within 60 days of a request for mediation. If the dispute is not resolved at mediation, or if for any reason

either or both parties decline to participate in mediation, the parties shall then proceed to arbitration.

(11) Either party shall submit the dispute to arbitration with Ambassadors of Reconciliation d/b/a Institute for Christian Conciliation, according to the arbitration rules of that organization (complete text of the Rules is available at [www.aorhope.org/rules](http://www.aorhope.org/rules) or by contacting ICC, at [icc@aorhope.org](mailto:icc@aorhope.org)). Consistent with these rules, each party to the agreement shall agree to the selection of the arbitrator. The parties agree that if there is an impasse in the selection of the arbitrator, Ambassadors of Reconciliation d/b/a Institute for Christian Conciliation (hereafter ICC), shall be asked to provide the name of a qualified person who will serve in that capacity. Consistent with the rules of procedure, the arbitrator shall issue a written opinion within a reasonable time. The Company will pay the arbitrator's fee and bear all other administrative charges imposed by the arbitration forum in excess of those that the employee would have otherwise had to pay if he or she filed a lawsuit in court. In the event that a court determines that this organization may not be utilized for binding arbitration, the parties shall select an alternative arbitrator. Besides any other requirements imposed by law, the alternative arbitrator selected shall be a retired California Superior Court judge, or an otherwise qualified individual to whom the parties mutually agree, and will be subject to disqualification on the same grounds as would apply to a judge of such court. All California rules of pleading (including the right of demurrer), all rules of evidence, all rights to resolution of the dispute by means of motions for summary judgment, judgment on the pleadings, and judgment under Code of Civil Procedure § 631.8 will apply and be observed. The arbitrator will have the immunity of a judicial officer from civil liability when acting in the capacity of an arbitrator, which immunity supplements any other existing immunity. Likewise, all communications during or for the arbitration proceedings are privileged under Civil Code § 47(b). As reasonably required to allow full use and benefit of this Agreement's modifications to the California Arbitration Act's procedures, the arbitrator will extend the times set by the Act for giving notices and setting of hearings. Resolution of all disputes shall be based solely upon the law governing the claims and defenses pleaded, and the arbitrator may not invoke any basis (including but not limited to, notions of "just cause") other than such controlling law. Awards shall include the arbitrator's written reasoned opinion.

(12) Oral representations or agreements made before or after my employment regarding dispute resolution do not alter this Agreement. I acknowledge and agree that if I signed another agreement to arbitrate claims against Company, this Agreement controls.

(13) If any term or provision, or portion of this Agreement is declared void or unenforceable, including, but not limited to, my agreement to waive any right I may have to bring a class, collective, and/or representative action, said term or provision shall be severed and the remainder of this Agreement shall be enforceable.

(14) I further acknowledge and agree that this Agreement, while mutually binding upon the parties, does not constitute a guarantee of employment or continued employment for any fixed period or under any particular terms except those contained herein and does not alter in any way the at-will nature of any employment relationship.

**By signing below, I acknowledge I have read and understand this agreement. I further acknowledge the terms of this agreement govern all claims and disputes that I may have at any time relating to my employment with the Company.**

**An agent of the company does not need to sign this agreement for it to bind the company.**

**AGREED:**

**DATE:** \_\_\_\_\_

**[Name of COMPANY, SCHOOL OR ORGANIZATION]** \_\_\_\_\_

**ORGANIZATION Representative:** \_\_\_\_\_

**INDIVIDUAL'S PRINTED NAME:** \_\_\_\_\_

**INDIVIDUAL'S SIGNATURE:** \_\_\_\_\_