

JPMorgan Chase Report on Its Review of Its US Employee Arbitration Program

October 7, 2022

Executive Summary

JPMorgan Chase (“JPMC” or the “Firm”) undertook a review of its United States mandatory employee arbitration program, in response to a shareholder request that JPMC’s Board of Directors (“Board”) examine the program’s impact on JPMC’s workplace culture, and employees’ ability to seek redress for harassment and discrimination in the workplace. The Board oversaw a review of the potential benefits and drawbacks of employee arbitration; fairness and bias in arbitration; discovery in arbitration as compared to litigation; class waivers; and JPMC’s arbitration and litigation data over the past six years, including time to resolution and outcomes.

The Firm engaged University of Nebraska College of Law Professor Kristen Blankley¹ as an independent expert and employment law attorneys from the law firm Pillsbury Winthrop Shaw Pittman. Both reviewed its employee arbitration program, which is part of the Firm’s workplace culture and values. The data analysis for the review was prepared with the assistance of JPMC personnel and relying on the support of outside consulting firms to verify the accuracy and consistency of the data. The scope of matters covered a six-year span and was designed to encompass employment discrimination, harassment, wrongful termination, and retaliation cases in court litigation or arbitration.

The review sought to look comprehensively at the Firm’s processes and procedures toward employee dispute resolution and assessments of employee culture, and was not limited

¹ Professor Blankley’s academic research has focused on alternative dispute resolution and arbitration ethics.

to a cost-benefit analysis. The review considered the question of whether arbitration is consistent with the Firm's values and is reasonable and appropriate for resolving certain employee disputes.

The review found that JPMC's policies and procedures for addressing employee concerns and potential wrongful conduct comport with best practices. Arbitration at JPMC is not expected to disincentivize employees from reporting concerns or reduce company incentives to maintain strong diversity, equity and inclusion. To the contrary, and as research suggests, the Firm's robust system of checks and balances helps to resolve disputes earlier, quicker, and more cost-effectively. In addition, arbitration is a backstop for matters not resolved elsewhere, and is only one part of the larger internal and external regulatory framework governing financial institutions that is well designed.

Differences between court litigation and arbitration, in result, duration, and other factors were also explored in JPMC's data. No significant differences could be discerned. Qualitative aspects of arbitration, however, favor the continuation of the program. JPMC's arbitration program provides mutual benefits to the Firm and employees, including moderately quicker resolutions of disputes, no limitation on employee rights or remedies, flexibility, expertise, and greater finality.

Importantly, at JPMC, the arbitration program exists on the backdrop of an extensive set of practices in place at JPMC centered on diversity and workplace inclusion, systems designed to prevent and address employee misconduct, and a culture of encouraging employees to report concerns. The Firm tracks, investigates, and escalates employee internal complaints, mindful of the well-being of the employee, Firm culture, looking beyond litigation-only tactics,

and assessing consistent and fair disciplinary outcomes and compensation impacts where wrongdoing occurred. These systems and processes are important elements of the Firm's overall effective control environment .

Based on this review, management has reported to the Board its conclusion that arbitration remains a superior method to resolve many disputes between employees and the Firm that are not resolved through other means, and JPMC's arbitration program is reasonably designed and effective.

The Board and management also understand and appreciate the view of certain shareholders who remain concerned about the impact of confidential arbitration proceedings and management did identify potential enhancements to the program. Accordingly, the Firm will undertake certain changes to its program, including permitting plaintiffs to disclose arbitration awards at their discretion.

Arbitration At JPMorgan Chase

JPMorgan Chase employees in the United States hired since July 2009 are subject to an arbitration agreement with a class action waiver, and some heritage institution employees have signed them earlier. Not all potential claims an employee may raise are subject to binding arbitration, but rather a limited set of claims. Additionally, claims precluded by federal law from being subject to mandatory arbitration are excluded, such as sexual harassment or sexual assault claims.

Arbitration at JPMC as governed by its Binding Arbitration Agreement (BAA) is fair and unbiased towards employees. Substantive causes of action, rights, and remedies that would otherwise be available in court are preserved. The procedures set forth in the BAA provide

flexibility, efficiency, and convenience for the employee. Even the confidentiality expectations do not expressly prohibit employees from discussing their issues with others, although confidentiality of the arbitration proceedings needs to be maintained. There is also no penalty against employees initiating lawsuits in court even if they are later compelled to arbitration.

Arbitration serves as just one avenue for resolving disputes and allows for arbitrators to award effective remedies that include those founded in equity. The review did not find anything inherently unfair or one-sided about an arbitration proceeding. Employees face fewer fees to pursue arbitration than in Court, and are afforded the same opportunity to conduct discovery, have their motions heard, cross-examine witnesses, and offer their own evidence. Although most employment cases in either arbitration or court resolve by mutual settlement, employees bringing arbitration matters are more likely to have their claims resolved after a hearing in which their side of the story is shared, as opposed to dismissed by a judge before a trial in court. Research has shown there is no institutional deterrent against employees (such as a skewed bias towards one party or another) in arbitration proceedings, which afford equal access to justice and legal representation as much as court litigation does.

The review noted that arbitrators are often steeped in knowledge of employment law and better equipped to resolve employment disputes. No evidence suggests that state or federal courts are better positioned to adjudicate harassment or discrimination claims. Arbitration offers the parties a more streamlined path to conclusion for those cases that move forward to a hearing. Court litigation at times results in years of appellate proceedings, whereas review of arbitration decisions is extremely limited, offering more finality.

Nothing in the JPMC arbitration agreement restricts current and former employees from filing charges with government agencies, such as the Equal Employment Opportunity Commission, Department of Labor or Occupational Safety and Health Administration, or raising concerns to the Board or other regulators. Employees have that option at their disposal in order to have a government agency make an assessment of any claim or potential widespread issue or to air their concerns in a more public manner. Other employees who seek a measure of protection of their privacy, however, may prefer the confidentiality accorded to arbitration proceedings.

JPMC Workplace Culture

The review also found that JPMC maintains effective internal processes to create a “Speak Up” culture, which empowers employees to raise issues and provides an opportunity for the Firm to gain insight into concerns about its workplace environment, recognize potential risks, and gauge the effectiveness of policies such as those related to anti-discrimination, anti-harassment, and anti-retaliation.

Beyond policies and training, employees are afforded multiple options to report concerns of misconduct, from their manager, to the Conduct Hotline managed by a third-party, or to Employee Relations, including anonymously. The Firm has a multi-layered, checks-and-balances approach to the handling of internal complaints, their investigation, and in issuing consistent and fair disciplinary dispositions. JPMC periodically assesses its own processes and procedures to determine whether enhancements are appropriate or new measures should be enacted.

The Firm utilizes various surveys to assess employee sentiment, such as employee exit surveys and an annual Employee Opinion Survey that gathers feedback on areas such as employee engagement, operational excellence, and commitment to integrity, fairness, and responsibility. Through these surveys the Firm receives additional insight on where things are going well and areas presenting opportunities for improvement. Where employees raise concerns, even after they have left the Firm, those complaints are then routed for review and investigation. Where employee concerns are first raised through employee litigation proceedings, the confidential arbitration forum is not an iron box that traps the flow of information. Even while a litigation matter is pending, the Firm has a conduct escalation process that is triggered if an allegation of inappropriate conduct arises during the course of the proceeding. The Firm will escalate the alleged conduct for investigation and appropriate dispositioning or disciplinary action.

In addition, the Firm is subject to comprehensive supervision of its culture and conduct programs by federal banking supervisory regulators on an ongoing basis. This oversight involves substantive reviews of the Firm's practices related to holding managers accountable, performance management, compensation impacts, conduct controls, cultural expectations, employee compliance programs, and other internal processes and procedures. Such oversight by external stakeholders adds another layer of accountability for the Firm and its employees. The Firm and its employees also benefit from receiving external insights from the ongoing and regular dialogue with the agencies' representatives as well as the Firm's own internal enhancements and assessments undertaken as a result.

In sum, JPMC has robust systems in place so that the Firm manifests its commitment to live up to its values, to regularly self-examine its workplace culture, to encourage employees to speak up, and then to take measures to address areas of concern.

Conclusion

JPMC's employee arbitration program is an effective dispute resolution mechanism and could be seen as a positive culmination of the overall system of workplace culture at JPMC. JPMC has robust policies and procedures to support a "Speak Up" culture in accordance with its Code of Conduct and Equal Opportunity, Anti-Discrimination and Anti-Harassment Statement. JPMC's policies and procedures for addressing employee concerns and potential wrongful conduct comport with best practices. Most workplace issues should resolve internally, and arbitration is simply a backstop for dealing with the small percentage of employee disputes that otherwise cannot be resolved. Arbitration does not replace any existing processes, but rather, supplements a system that meets best practices and comports with JPMC's stated overall values.

From an employee perspective, the BAA preserves all substantive causes of action, rights, and remedies and discovery opportunities that would otherwise be available in court. The procedures set forth in the BAA are reasonable and provide flexibility, efficiency, and convenience for the employee. Employees are assured a mutually-convenient location and minimal fees, and can select from a panel of well-qualified and highly respected professionals. The confidentiality expectations in the BAA do not expressly prohibit employees from discussing their issues with friends, family, co-workers, or the media, nor does it prohibit them

from initially filing their complaint in court prior to commencing arbitration or raising concerns with the government or regulators at any time.

The review did not provide any basis to believe that the arbitration program impacts the Firm's ability to learn about gaps in the workplace culture or inhibits creating a positive workplace environment. JPMC continually works to promote a culture of respect that allows every employee to feel safe and empowered at work. This builds upon the Firm's commitment to the values of integrity, fairness, and accountability.

While JPMC prefers informal resolution of employee concerns, the review suggests that employee disputes that cannot be resolved internally should be submitted to an impartial adjudicator where possible. Historically and now, arbitration offers employees the best chance for their matters to be heard and resolved quickly, equitably, and with finality. The Firm's robust processes, diversity and inclusion commitments, data, and history demonstrate that workplace culture is not impacted negatively by an arbitration requirement.

Recommendations

Based on analysis by Professor Blankley of JPMC's workplace culture and arbitration program, management's analysis and assessment of the issues and conclusions of the independent expert, and the Board's oversight of the work, the mandatory arbitration program is an effective dispute resolution mechanism for the Firm and fits into JPMC's goals and organizational values.

The review has recommended, and the Board suggests that the Firm consider, implementing the following:

- Adopt processes to utilize options for mandatory consideration of arbitration panels with a diverse slate of neutral third parties;
- Augment existing arbitration procedures with the ability, at the employee plaintiff's discretion, to conduct a mediation prior to the initiation of arbitration, at JPMC's expense;
- Permit the confidentiality of future arbitration awards to be waived at the discretion of the employee plaintiff;
- Provide periodic reporting on the Firm's US employee arbitration and litigation docket to the Board of Directors.