Firm's strategic orientation shapes how it resolves workplace disputes

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When defusing workplace conflict, firms favor alternative dispute resolution practices that align with their underlying strategic bent, says new research co-written by U. of I. labor professor Ryan Lamare. Credit: L. Brian Stauffer

A new paper co-written by a University of Illinois expert who studies

labor and employment arbitration examines the strategic underpinnings of why firms use certain alternative dispute resolution practices when sorting out a workplace issue.

As firms have increasingly looked to contain costs associated with employment conflicts or take workplace conflict out of the public eye, the use of third-party alternative dispute resolution mechanisms has grown to be commonplace. And that growth has been driven by a shift in the willingness of executives in nonunion firms to adopt and implement dispute resolution methods—primarily arbitration and mediation—that have been used for the last 30-plus years by unionized firms, said J. Ryan Lamare, a professor of labor and employment relations at Illinois.

"Since the 1970s, firms have tried to channel workplace conflict in such a way that it doesn't always end up litigated in court," he said. "Litigation is very expensive, there's a lot of uncertainty around the process, and it can be very damaging to relationships between employees and managers."

In the corporate world, the field of alternate dispute resolution has been understudied from a strategic perspective, Lamare said.

"We've had very little understanding until recently of the extent to which firms have underlying strategic orientations for their preferences or their likelihood of using alternate dispute resolution," he said. "What drives them to use mediation or arbitration? Is it the same thing, or are there strategies behind choosing one over the other?"

To investigate the potential link, Lamare and co-authors Ariel C. Avgar and David B. Lipsky, both of Cornell University, surveyed more than a third of the general counsels or high-ranking attorneys from Fortune 1000 corporations about the strategic drivers for alternative dispute resolution usage. The researchers augmented the responses with public

data—financial performance, firm size—for each of the companies included in the sample.

The researchers uncovered four latent strategic orientations—efficiency, satisfaction, sustainable resolutions or litigation avoidance—that drive firms' usage of alternative dispute resolution. They found firms that value efficiency are significantly more likely to use mediation than firms that place less emphasis on efficiency. Similarly, firms focused on enhancing satisfaction with dispute resolution outcomes are significantly more likely to use mediation than firms that attach less value to it, but a satisfaction orientation was also found to be significantly related to the frequency of arbitration usage, according to the paper. On the other hand, litigation avoidance was not a significant driver of arbitration usage.

The researchers also found that a firm's sustained commitment to alternative dispute resolution predicted higher usage of both mediation and arbitration.

Taken together, the evidence points to an important link between a firm's strategic posture toward and commitment to alternative dispute resolution and its actual use of those specific vehicles, Lamare said.

"One of the advantages of this paper is the strength of the data collection," he said. "The fact that we were able to go to the 1,000 largest companies in the U.S. is really valuable because it's very difficult to find data on underlying behaviors at the firm level."

Much of the controversy around arbitration is that companies use it strategically to limit their exposure to lawsuits and other high-profile, high-cost disputes that have the potential to generate negative publicity, Lamare said.

"Arbitration is a quasi-judicial process that is essentially a replication of the court system but is conducted by a private third-party arbitrator," he said. "The reason you might want to use arbitration over litigation would be that it's more efficient, cost-effective and informal; some would argue that it leads to more equitable outcomes. But others reject that idea, and argue that it allows for an unleveling of the playing field that benefits employers, so really it depends on which side of the fence you're on."

On the other hand, mediation is a voluntary process, and "you don't necessarily have to reach an agreement," Lamare said.

"The only requirement is that the mediator is acceptable and the settlement is acceptable to both parties," he said. "There's no binding consequence for failing to resolve the conflict."

Overall, the findings provide evidence that corporations continue to rely on mediation and, to a greater extent, arbitration because "they believe these practices result in more satisfactory outcomes than litigation," Lamare said.

"In contrast to litigation, arbitration allows employers to maintain nearly total control over the rules that lead to the outcomes of employment disputes," he said. "Employers can, for example, ensure the confidentiality of the proceedings, exercise significant influence on the selection of the neutral party and limit discovery. Perhaps most importantly, the cadre of experienced, neutral third-party arbitrators who specialize in employment disputes is growing, and many employers would prefer to have them decide such disputes rather than judges and juries."

The paper was published in the journal *ILR Review*.

More information: David B. Lipsky et al. Organizational Conflict Resolution and Strategic Choice: Evidence from a Survey of Fortune 1000 Firms, *ILR Review* (2019). DOI: 10.1177/0019793919870169