

Hawaii

Are mandatory arbitration provisions recognized in your state? If so, are there any limitations to its enforcement?

Mandatory arbitration clauses are well-recognized in Hawaii and are, in some circumstances, statutorily required, such as in residential leases for reopening rent negotiations.ⁱ

Hawaii's Revised Uniform Arbitration Act (RUAA), codified in 2002 under HRS Chapter 658A, provides specific procedures relating to the validity and enforcement of any arbitration provision, mandatory or permissible, in the State. A valid and enforceable arbitration agreement must be in writing, must be unambiguous as to the parties' intent to submit disputes to arbitration, and must be supported by bilateral consideration.ⁱⁱ

Under Hawaii's RUAA, either party may waive, or the parties may vary the effect of, the requirements set forth in Chapter 658A, except those relating to jurisdiction, venue, witnesses, subpoenas, dispositions, discovery, the arbitrator's authority, applications for judicial relief, and requirements for creating a valid arbitration agreement. Additionally, parties cannot agree to unreasonable restrict rights relating to the initiation of arbitration proceedings or the disclosure of any facts by a neutral arbitrator.ⁱⁱⁱ

The underlying policy considerations supporting the enforcement of mandatory arbitration provisions are also an important factor in the courts' decisions, and, to promote judicial economy and reduce the number of unnecessary cases, the Supreme Court of Hawaii has required strict compliance with the RUAA requirements for initiating arbitration proceedings.^{iv}

Recently, the Supreme Court upheld the validity of a mandatory arbitration provision included in a relatively short, written employment agreement where both parties evidenced mutual assent to arbitrate and to forego their respective rights to a judicial forum.^v There, the Court relied upon the agreement's plain language requiring the arbitration of any dispute concerning the agreement and upon policy favoring arbitration, emphasizing that "any doubt concerning whether a dispute is covered by an arbitration agreement should be resolved in favor of arbitrability."^{vi}

Yet, in another case one month later, the Supreme Court invalidated an arbitration provision as being procedurally and substantively unconscionable because the agreement was found to be both adhesive and ambiguous when read with the other controlling documents (i.e., purchase agreement, public report) that offered conflicting guidance on dispute resolution, thereby depriving the non-drafting party from a full and adequate understanding of their rights under contract.^{vii}

What is your state's law, if any, regarding gift cards, subscription services and loyalty programs?

Hawaii does not have specific laws regarding gift cards, subscription services and loyalty programs.

ⁱ See, e.g., Haw. Rev. Stat. (HRS) § 516d-12.

ⁱⁱ *Douglass v. Pflueger Haw., Inc.*, 110 Haw. 520, 531, 135 P.3d 129, 140 (Haw. 2006); see also Haw. Rev. Stat. § 658A-6(a) (“An agreement contained in a record to submit to arbitration any existing or subsequent controversy. . . is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.”).

ⁱⁱⁱ HRS § 658A-4 (concerning non-waivable provisions).

^{iv} See, e.g., *Ueoka v. Szymanski*, 107 Haw. 386, 395, 114 P.3d 892, 901 (Haw. 2005) (“Allowing a party to compel arbitration after filing a lawsuit (without filing a notice initiating arbitration) does nothing to avoid litigation or reduce the number of cases crowding our courts.”); *Yamamoto v. Chee*, 146 Haw. 527, 463 P.3d 1184 (Haw. 2020) (vacating an Order compelling arbitration because petitioner failed to provide proper notice in compliance with the RUAA regarding the initiation arbitration proceedings).

^v See *Gabriel v. Island Pac. Acad., Inc.*, 140 Haw. 325, 335, 400 P.3d 526, 536 (Haw. 2017).

^{vi} See *id.* at 335, 400 P.3d at 536.

^{vii} See *Narayan v. Ritz-Carlton Dev. Co.*, 140 Haw. 343, 351-52, 400 P.3d 544, 552-53 (Haw. 2017).