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# **Enforcing Employment Rights through ADR Systems: An Empirical Examination of Employment Arbitration**

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# ADR and Individual Employment Rights

- Growing individualization of the employment relationship:
    - Declining coverage of collective representation.
    - Growth of individual employment rights and claims.
  - Expanded use of alternative dispute resolution (ADR) to resolve individual rights claims.
  - Study examines mandatory arbitration of employment law claims in the U.S.
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# The Rise of Mandatory Arbitration in U.S. Employment Relations

- Growth of statutory employment rights and high risk/reward litigation:
    - Employment discrimination statutes (e.g. Title VII) as broadest exception to employment-at-will.
    - Federal courts study: 36.4% employee win rate; \$150,500 median, \$336,291 mean damages.
    - CA State courts study: 59% employee win rate; \$296,991 mean damages.
  - Expanded deferral by courts to private ADR mechanisms:
    - *Gilmer v. Interstate/Johnson Lane (1991)*: Statutory claims subject to arbitration.
    - *Circuit City v. Adams (2001)*: Arbitration clauses can be part of individual employment contracts.
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## The Data

- Employment arbitration cases administered by the American Arbitration Association (AAA) in 2008.
  - 440 total cases terminating in an award (all employment cases administered nationally by AAA in US); detailed analysis of 217 arbitration case files.
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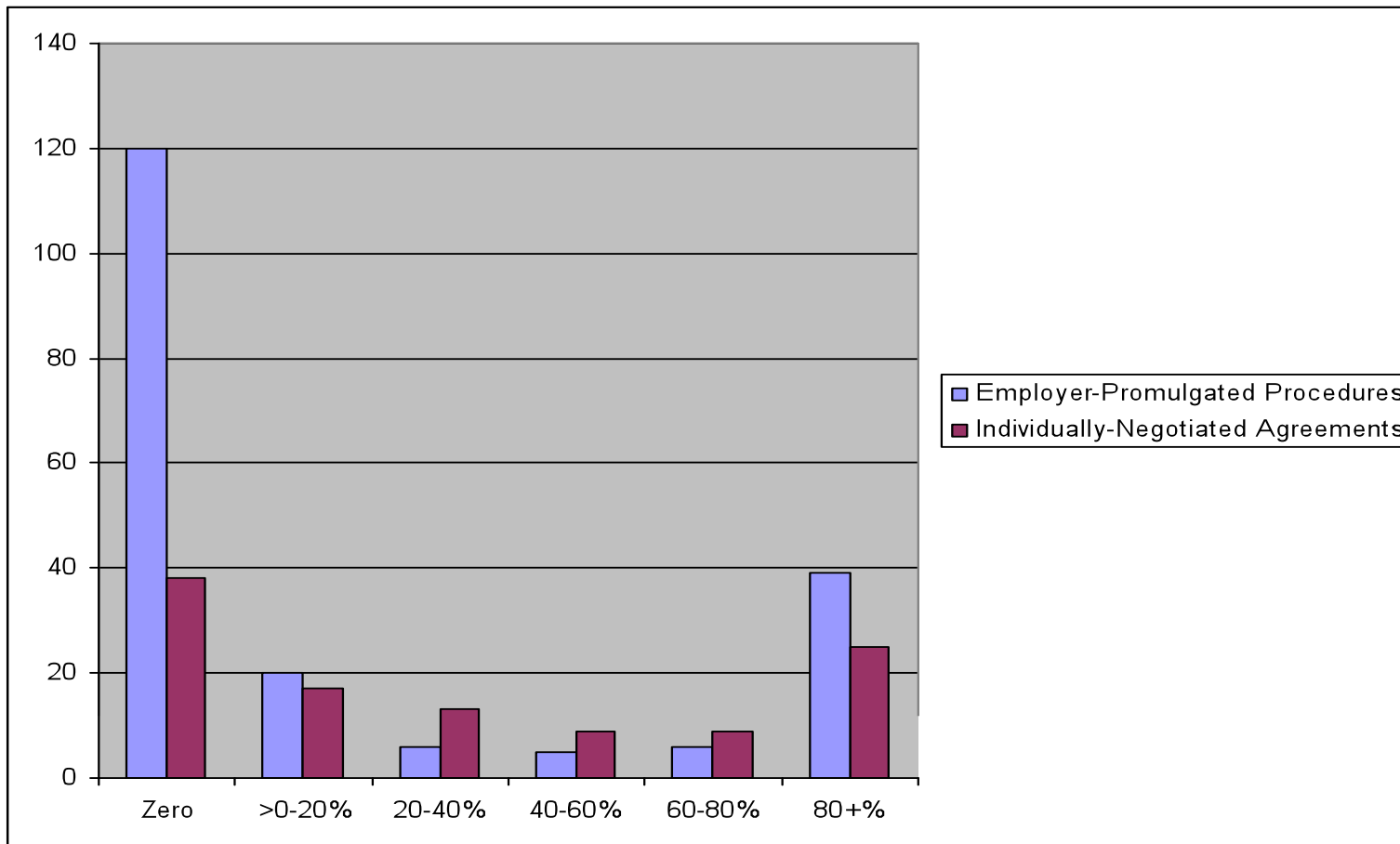
# Sample Characteristics

- **Employer-promulgated procedures: 320 cases.**
    - Most (82.4%) employees earn less than \$100,000; minority are professionals (36.1%).
    - About half of cases (51%) involve discrimination claims.
    - Employer pays 100% of arbitration fees in over 95% of cases.
  - **Individually-negotiated agreements: 117 cases.**
    - Most (60.5%) involve employees making between \$100,000 and \$250,000; most are professionals (72.1%).
    - Few (11%) claims allege discrimination.
    - Either employer pays all fees (58% of cases) or fees split between employer and employee (35% of cases).
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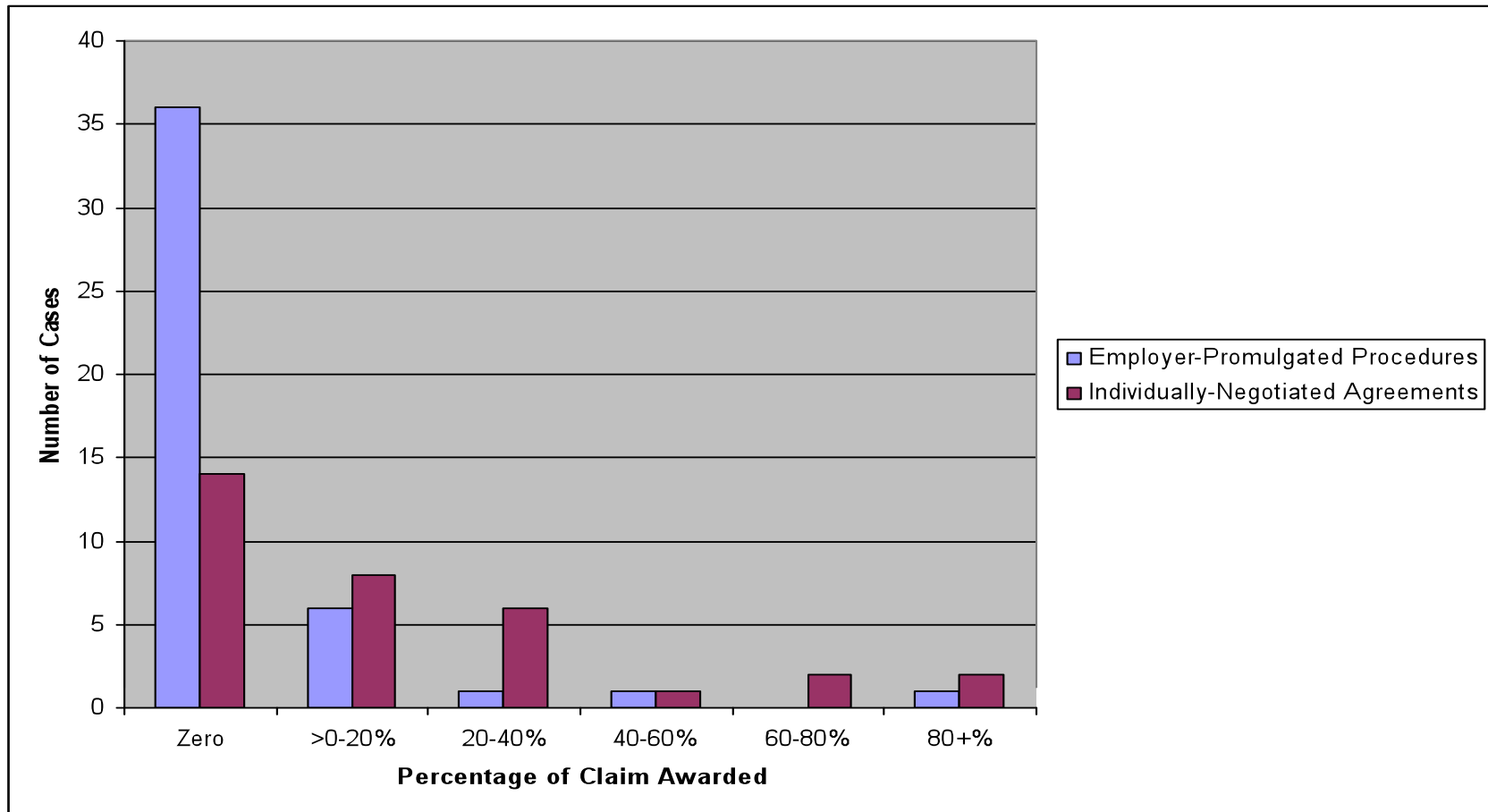
# Employment Arbitration Case Outcomes

		Plaintiff Win Rate	Average Damages (plaintiff wins)	Average Damages (all cases)
Employer-Promulgated Procedures (Mandatory)	Employee Plaintiff	23.9% (n=293)	\$82,648 (n=70)	\$19,745 (n=293)
	Employer Plaintiff	55.6% (n=27)	\$39,002 (n=15)	\$21,668 (n=27)
Individually-Negotiated Agreements	Employee Plaintiff	65.3% (n=98)	\$220,376 (n=64)	\$143,919 (n=98)
	Employer Plaintiff	63.2% (n=19)	\$152,947 (n=12)	\$96,598 (n=19)
<i>Litigation studies (Eisenberg et al., 2003)</i>	<i>Federal courts</i>	<i>36.4%</i>	<i>\$336,291</i>	<i>\$143,497</i>
	<i>State courts</i>	<i>57%</i>	<i>\$462,307</i>	<i>\$328,008</i>

# Percentage of Claims Awarded



# Percentage of Claims Award (Claims over \$500,000)





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# Conclusions

- Mandatory arbitration an important new institutional structure for enforcement of individual employment rights.
    - Covers around twice as many employees (20-30%) as collective bargaining (12.3%) in the U.S. today.
  - Complexities in analyzing cases and outcomes: differentiate types of cases.
  - Fewer employee wins and lower damages under employer-promulgated arbitration than in litigation.
  - Not characterized by ‘split-the-baby’ compromise decision-making sometimes seen in arbitration.
  - Employment arbitrators tend to reject or reduce large damage claims: ‘trimming-the-tall-daisies’.
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