Supreme Court Rules Class Action Waivers in Employment Arbitration Agreements Valid

Class action waivers in employment arbitration agreements are enforceable under the Federal Arbitration Act (FAA), the U.S. Supreme Court has held in a much-anticipated decision in three critical cases. *Epic Systems Corp. v. Lewis,* No. 16-285; *Ernst & Young LLP et al. v. Morris et al.,* No. 16-300; *National Labor Relations Board v. Murphy Oil USA, Inc., et al.,* No. 16-307 (May 21, 2018).

The Supreme Court's decision resolves the circuit split on whether class or collective action waivers contained in employment arbitration agreements violate the National Labor Relations Act (NLRA). In a 5-4 decision authored by Justice Neil Gorsuch, the Court held that the FAA states that arbitration agreements providing for individualized proceedings are enforceable and neither the FAA nor the NLRA require otherwise. Chief Justice John Roberts and Justices Anthony Kennedy, Clarence Thomas, and Samuel Alito joined in that decision.

Background

Arbitration agreements requiring employees to pursue work-related claims in arbitration, rather than in court, have long been enforced pursuant to the FAA. However, in 2013, the National Labor Relations Board (NLRB) ruled that employers violate the NLRA when they require employees, as a condition of employment, to assent to an agreement to resolve work-related disputes pursuant to an arbitration provision containing a class or collective action waiver.

The U.S. Court of Appeals for the Fifth Circuit rejected the NLRB's rulings, first in *D.R. Horton, Inc. v. NLRB,* 737 F.3d 344 (5th Cir. 2013), and, subsequently, in *Murphy Oil USA, Inc. v. NLRB,* 808 F.3d 1013 (5th Cir. 2015). The Fifth Circuit, thereafter, was joined by the U.S. Courts of Appeals for the Second and Eighth Circuits, which enforced arbitration agreements requiring employees to submit their employment claims to individual, as opposed to class or collective, arbitration.

The U.S. Court of Appeals for the Seventh Circuit reached the opposite conclusion on May 26, 2016, thereby creating a circuit split. In *Lewis v. Epic Systems Corp.,* 823 F.3d 1147 (7th Cir. 2016), the Seventh Circuit held arbitration agreements that prohibit employees

from bringing or participating in class or collective actions violate the NLRA. In *Morris v. Ernst & Young,* 834 F.3d 975 (9th Cir. 2016), the Ninth Circuit agreed with the Seventh Circuit and the NLRB.

Given the issue's importance and the requests by both employers and the NLRB to have the Supreme Court decide the issue, it is unsurprising the Supreme Court granted *writs of certiorari* in January 2017 and consolidated all three cases from the Fifth, Seventh, and Ninth Circuits. In the past, Supreme Court's decisions on the enforceability of class action waivers (albeit outside the employment context) were decided by 5-4 and 5-3 votes and were authored by the late-Justice Antonin Scalia. Immediately following his passing, the likelihood of a 4-4 tie was expected, until Justice Gorsuch joined the Court in April 2017.

Supreme Court's Decision

The comprehensive opinion is succinct in its ultimate conclusion that the NLRA does not trump the FAA. Further, in applying common rules of statutory construction, the Court stated that Section 7 of the NLRA is focused on employees' rights to unionize and engage in collective bargaining and that it does not extend to protecting an employee's right to participate in a class or collective action. Now, employers can be certain that class or collective action waivers in arbitration agreements do not violate the NLRA.

Please contact Jackson Lewis for assistance.

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